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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942-1943

No. 17

JAMES LANIER BELL, PETITIONER,

vs.

PREFERRED LIFE ASSURANCE SOCIETY OF MONT-
GOMERY, ALABAMA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 18, 1943.

CERTIORARI GRANTED APRIL 19, 1943.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

[Caption omitted]

[fol. 2]

**IN THE DISTRICT COURT OF THE UNITED STATES,
MIDDLE DISTRICT OF ALABAMA**

JAMES LANIER BELL, Appellant

VS.

PREFERRED LIFE ASSURANCE SOCIETY of MONTGOMERY, ALABAMA, Joseph E. Justice, Spencer H. Longshore, M. M. Longshore, W. Guy Longshore, J. J. Warren, R. D. Carlton, A. D. Merchant, A. F. Whiting, B. Cosby Bird, and F. M. Phillippi, Appellees

DESIGNATION of RECORD—Filed July 29, 1941

To Messers. Hill, Hill, Whiting & Rives and Peyton D. Bibb, Esq., Attorneys for the Appellees, and to A. F. Whiting, Esq., of Counsel for the Appellees:

You will please take notice that pursuant to Rule 75 (a) of the Rules of Civil Procedure for the District Court of the United States the appellant above named designates the following portions of the record in the above-entitled cause to be used as the Record on Appeal:

1. Plaintiff's original Complaint, together with all exhibits.
2. Plaintiff's amended Complaint, together with all exhibits.
3. Answer of defendant Preferred Life Assurance Society to plaintiff's original complaint, with all exhibits.
4. Answer of defendant Preferred Life Assurance Society to plaintiff's amended complaint, with all exhibits.
5. Answer of individual defendants to plaintiff's amended complaint.
6. Interrogatories propounded by plaintiff to defendant Preferred Life Assurance Society.
7. Defendant Preferred Society's answers thereto.
8. Judge Kennamer's Order dismissing complaint.
- [fol. 3] 9. Judgment entered thereon.
10. Notice of Appeal.

11. Copy of Appeal Bond.
12. Clerk's Certificate of Record.
13. This Designation.

R. K. Wise, 701 Liberty Life Building, Columbia, S. C.; Wise & Whaley, 701 Liberty Life Building, Columbia, S. C.; R. B. Barnes, 1029 Frank Nelson Building, Birmingham, Alabama; W. H. Brantley, Jr., 1029 Frank Nelson Building, Birmingham, Alabama; Holley, Milner & Holley, Moore Building, Wetumpka, Attorneys for the Appellant.

Ball & Ball, 719 First National Bank Bldg., Montgomery, Alabama.

We hereby acknowledge that a copy of the above Designation was served upon us on the 29 day of July, 1941. Hill, Hill, Whiting & Rives, Richard T. Rives, Attorney for Appellees.

[fol. 4] JAMES LANIER BELL, PLAINTIFF,

vs.

PREFERRED LIFE ASSURANCE SOCIETY of MONTGOMERY, ALABAMA; Joseph E. Justice, W. M. Longshore, B. Cosby Bird, J. J. Warren, F. M. Phillippi, Spencer H. Longshore, and John Doe, Defendants.

COMPLAINT—Filed February 30, 1941

Plaintiff above named, complaining of defendants above named, alleges:

1. Plaintiff is a citizen and resident of the State of South Carolina and defendant Preferred Life Assurance Society of Montgomery, Alabama, is a corporation organized under the fraternal benefit statutes of the State of Alabama and having its principal place of business in Montgomery in the Middle District of Alabama.

2. On information and belief defendants Joseph E. Justice, M. M. Longshore, B. Cosby Bird, J. J. Warren, and F. M. Phillippi, and Spencer H. Longshore are officers, trustees, directors or agents of defendant Preferred Life Assurance Society and as such have custody, control and management of the assets of said Society, and are residents

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of the Middle District of Alabama and each over the age of 21 years.

3. Defendant John Doe represents all the officers, trustees and directors of defendant Preferred Life Assurance Society whose names are unknown to plaintiff, all of whom are, on information and belief, residents of [fol. 5] the Middle District of Alabama.

4. This action is brought to re-organize the insurance department of defendant Preferred Life Assurance Society, and to displace its present officers and directors and trustees, and for damages; the insurance assets of Preferred Life Assurance Society exceed One Million (\$1,000,000.00) Dollars; and the amount in controversy exceeds Three Thousand (\$3,000.00) Dollars, exclusive of interest and costs.

5. Defendants write a form of insurance known as "Contingent Endowment" insurance; by its terms all members of the Society are supposed to be divided into groups, called "divisions" each consisting of twenty-five (25) members of the same entry age; in each division each member is given a position numbered from one (1) to twenty-five (25); when a death occurs in any division the dead member's beneficiary receives the face amount of the dead member's insurance as a death claim, and the living member in good standing who holds the lowest position in the same division collects the face amount of his own insurance as a living claim, and his certificate is forthwith cancelled; by reason of this contingency or collecting the face amount of insurance while still alive and after no fixed period of time, this form of insurance is very popular, and commands premiums much higher than ordinary "whole life" insurance; from the standpoint of the probability of collecting the insurance while still alive, the essence of the contract is that there be at all times twenty-five (25) members in each division, and the Society binds itself to at all times keep and maintain each division at a strength of twenty-five (25) members.

6. Heretofore, on or about the 10th day of November, 1934, an agent of defendants solicited plaintiff to apply for a certificate of contingent endowment insurance issued by Preferred Life Assurance Society; said agent represented

to plaintiff that plaintiff would have the number Five (5) [fol. 6] position in his division; that plaintiff would "collect in two years easy"; that, "we will fill this group before we start another one"; that there would be twenty five (25) members in plaintiff's division; that all of these representations, except as to the position offered plaintiff, were false, and were known to be false when made and were made with a reckless disregard for the truth, but that plaintiff reasonably believed them to be true and relied on them, and had a right to rely on them; that in reliance on said representations, and at the urgent solicitation of defendants' agent, plaintiff applied to Preferred Life Assurance Society for a certificate of contingent endowment insurance; that plaintiff would not have applied for such certificate except for said representations.

7. Upon plaintiff's said application defendants issued to plaintiff, and sent to him through the United States mails, contingent endowment insurance certificate Number 18,497, Class (age) 23, Division F(e), Position, Number 5; plaintiff accepted the same and has paid premiums on the same in the reasonable belief that there were at all times twenty-five (25) members in his said division.

8. Plaintiff first learned in the early part of the year 1940 that there were not twenty-five (25) members in his division, but only ten (10) members, of whom plaintiff is number four (4); that plaintiff's contract of insurance was executed in and is subject to the laws of the State of South Carolina; that under the laws of said State defendants' actions in relation to his said premium amount to a fraudulent misrepresentation, and to a breach of contract, accompanied by a fraudulent act, either or both, that either of said actions by defendants entitles plaintiff, under the laws of the State of South Carolina, to vindictive damages.

9. On information and belief: the defendants have never had a division containing twenty-five members, and have [fol. 7] never had any division containing more than ten or twelve members; that notwithstanding this fact they have continued to solicit business and accept premiums through the United States mails upon the representation that all divisions contained twenty-five members and were continually kept and maintained at twenty-five members.

10. On information and belief: the defendants have opened and "started" numerous divisions since plaintiff was induced to purchase his said insurance certificate, and have made no effort to fill his division before starting another division, nor ever had any intention of so doing.

11. By reason of defendants' breach of their contract with plaintiff he has been greatly damaged in his opportunity to collect on his certificate while he is still alive, in that according to the American Experience Table of Mortality plaintiff's certificate will take many years longer to mature with ten members in his division than if there were twenty-five members.

12. On information and belief: defendants have long since ceased to try to fill plaintiff's division, or any division, but on the contrary have organized another insurance company, known as "First National Insurance Company" or by some similar name, which writes and issues the same form of insurance hereinabove described in competition with defendant Preferred Life Assurance Society, but is enabled to obtain more business by reason of being able to offer lower position numbers; on information and belief all or substantially all the selling staff of Preferred Life Assurance Society have now taken similar positions with said "First National Insurance Company", defendants having abandoned all efforts to fill any division of Preferred Life Assurance Society and having concentrated their forces and abilities on persuading various persons, both members and non-members of Preferred Life Assurance Society, to purchase similar insurance with "First National Insurance Company" upon representations similar [fol. 8] lar to those made to plaintiff, to the effect that said company will fill and keep filled its divisions, all of which said representations are, as plaintiff believes, entirely false, and, to the extent that such representations persuade members of Preferred Life Assurance Society to cease their membership in said Society in order to purchase insurance with First National Insurance Company and persuade other persons to purchase insurance with First National Insurance Company in preference to becoming members of Preferred Life Assurance Society, such representations constitute a fraud upon plaintiff and all other members of Preferred Life Assurance Society.

13. On information and belief: the defendants Joseph E. Justice, M. M. Longshore, B. Cosby Bird, J. J. Warren, F. M. Phillippi, Spencer H. Longshore and John Doe, the officers, directors, trustees or agents of Preferred Life Assurance Society, operate the same for their own personal benefit, and not for the benefit of the members, in that they receive and obtain large and exorbitant salaries and commissions, such that they have become wealthy, although plaintiff has never received, nor as he is informed, has any member of the Society ever received, one cent in dividends, despite the fraternal nature of the society; and in that as soon as it became difficult to sell membership certificates in the Society they organized or caused to be organized said "First National Insurance Company" in order the more easily to sell this form of insurance; and in that although the Society is chartered as a fraternal order plaintiff, and, as he is informed, the great majority of the Society's members, were not informed of this fact at the time they were solicited to purchase, and did purchase insurance, with the Society, but on the contrary plaintiff was not so informed and did not commence to receive notices of lodge meetings until the year 1939; and in that, by thus not informing plaintiff and the other members of the Society that [fol. 9] they belonged to a fraternal order, defendants deprived them of their right and opportunity to attend lodge meetings and vote on the election of delegates and officers of the Society and deprived them of any control over the actions of such officers, chief among whom are the defendants; and in that defendants have never sent plaintiff a financial statement of the Society; and in that defendants did not require plaintiff, nor, as he is informed, the great majority of applicants for membership in the Society, to undergo any physical or medical examination at the time of the application for insurance, or at any other time, notwithstanding that such physical and medical examination is specifically required of all applicants for membership in fraternal orders by the Statute Law governing the operation of fraternal benefit societies in the States of Alabama and South Carolina, whereby poor physical risks were enabled to become members of Preferred Life Assurance Society, to the prejudice of Plaintiff and all other members in good health.

14. Plaintiff received his certificate through the United States mails, and has received numerous notices of premiums due and has paid numerous premiums through the United States mails, and defendants have accepted many such premiums from plaintiff and other members of the Society after having abandoned efforts to fill the divisions of the Society, without informing the members of such abandonment; that plaintiff is now informed that this entire scheme of insurance is an illegal lottery and constitutes an illegal and unlawful scheme to defraud, and that it is also a wagering contract in that it attempts to give to plaintiff a beneficial interest in the lives of the other members of his division, in whom he has no insurable interest, and as to whom he does not belong to the class of beneficiaries of fraternal benefit insurance policies recognized and permitted by the [fol. 10] Statute Law of the States of Alabama and South Carolina, and this is true for each and every member who participates in the scheme of insurance hereinabove mentioned and described; but that even if such scheme is not a lottery and a wager, defendants have breached their contract with plaintiff and all other members by not filling any of the Society's divisions nor making any effort so to do, and have defrauded plaintiff and the other members of the Society by not informing them of the true facts concerning the operation of the Society and by nevertheless continuing to accept the members' monies without making such disclosure.

15. Plaintiff's certificate is in full force and effect and he is a member in good standing of defendant Preferred Life Assurance Society and vitally interested in having the same properly and economically administered, as to its insurance department, as an ordinary fraternal benefit society, selling only ordinary and standard certificates of insurance; defendants, by reason of the fraud and wrongs which they have perpetrated upon the society and upon plaintiff and the other members of the Society as hereinabove set forth, are not fit, proper or competent persons to be entrusted with the management of the insurance feature of the Society; and plaintiff is entitled to have them displaced as officers, directors, and trustees and replaced by fit, competent and suitable persons, and in the meantime is entitled to have a temporary receiver appointed pending the reorganization of the Society, to immediately take charge of

the insurance department of the Society and preserve the funds of the same for the benefit of plaintiff and the other members of said Society, said funds being a trust fund for the benefit of the members of the Society; and plaintiff is further entitled to a money judgment against the defendant officers, directors and trustees, and each of them in such sum of money as may be found proper and just upon an [fol. 11] accounting being had of said officers, directors and trustees, said judgment being for the benefit of the Society and its members, for the fraudulent and wrongful conduct of said officers, directors and trustees.

16. By reason of defendants' fraudulent misrepresentations to plaintiff, and by reason of their acts of fraud toward him as hereinabove set forth, plaintiff is entitled to have his certificate reformed so as to be an ordinary certificate of "whole life" insurance, and is entitled to actual and punitive damages in the sum of Two Hundred Thousand (\$200,000.00) Dollars.

17. Plaintiff is entitled to relief at the hands of this Court for the reason that any attempt to obtain relief within the Society would be futile.

Wherefore: Plaintiff asks judgment:

1. For damages in the sum of Two Hundred Thousand (\$200,000.00) Dollars.

2. That the defendant officers, directors and trustees be displaced by others who will be fit and suitable and regularly elected by the members of Preferred Life Assurance Society.

3. That in the meantime and pending this suit, a receiver be appointed to take charge of and conserve the assets of the insurance department of said Society, the same being trust assets.

4. For a money judgment against each of said officers, directors and trustees in such sum, or sums, as shall be found to be justly due and owing from each of said officers, directors and trustees to the Society.

5. For such other and further relief as to this Honorable Court may seem just and proper.

[fol. 12] 6. For the costs and disbursements of this action.

Thomas B. Whaley; W. Turner Logan, Jr., Sylvan Bldg., 1205 Hampton St., Columbia, S. C.; R. K. Wise; Wise & Whaley, 701 Liberty Life Bldg., Columbia, S. C.; R. B. Barnes, 1029 Frank Nelson Bldg., Birmingham, Alabama; W. H. Brantley, Jr., 1029 Frank Nelson Bldg., Birmingham, Alabama; Holley, Milner & Holley, Moore Bldg., Wetumpka, Ala.

[fol. 13] *Duly sworn to by Thomas B. Whaley. Jurat omitted in printing.*

[fol. 14] IN UNITED STATES DISTRICT COURT

NOTICE AND INTERROGATORIES—Filed February 11, 1941

To: Preferred Life Assurance Society of Montgomery, Alabama:

You Will Please Take Notice, that plaintiff, pursuant to Rule 33 of the Federal Rules of Civil Procedure, submits the following interrogatories to be answered separately and fully in writing under oath by the president of Preferred Life Assurance Society of Montgomery, Alabama or any officer competent to answer same, which answers shall be signed by the person making them and a copy thereof served on defendant's attorneys within fifteen (15) days after the service aforesaid, and that if answers to interrogatories are not served within the said time, plaintiff will move five (5) days after the expiration of the fifteen-day period before the Honorable Charles B. Kennamer, United States District Judge, at the United States Court House in Montgomery, Alabama, at 11:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an Order to enter judgment by default against the said defendant, Preferred Life Assurance Society of Montgomery, Alabama.

The Interrogatories proposed by plaintiff are:

[fol. 15] Part I—Number of Divisions for \$1000.00 Certificates

1. On what date did Preferred Life Assurance Society receive from the state of Alabama its charter as a fraternal benefit society?

2. How many members did the society have on that date?

3. How many of the said charter members held certificates in the face amount of \$1000.00?

4. How many of the said charter members holding certificates in the face amount of \$1000.00 held Position #1 in their respective divisions?

5. How many of the said charter members for \$1000.00 certificates held positions in their respective divisions other than Position #1?

6. What was the highest position number held by any charter member of Preferred Life Assurance Society, among the holders of \$1000.00 certificates?

7. On the said date on which said Society received from the State of Alabama its charter as a fraternal benefit society, how many divisions of \$1000.00 certificates were set up for each of the following age classes?

a. 16.	k. 26.	u. 36.	ee. 46.
b. 17.	l. 27.	v. 37.	ff. 47.
c. 18.	m. 28.	w. 38.	gg. 48.
d. 19.	n. 29.	x. 39.	hh. 49.
e. 20.	o. 30.	y. 40.	ii. 50.
f. 21.	p. 31.	z. 41.	jj. 51.
g. 22.	q. 32.	aa. 42.	kk. 52.
h. 23.	r. 33.	bb. 43.	ll. 53.
i. 24.	s. 34.	cc. 44.	mm. 54.
j. 25.	t. 35.	dd. 45.	nn. 55.

8. For each of the following age classes, in how many \$1000.00 certificate divisions had the No. 1 Position not been sold on said date on which Preferred Life Assurance Society received from the State of Alabama its said charter [fol. 16] as a fraternal benefit society?

a. 16.	k. 26.	u. 36.	ee. 46.
b. 17.	l. 27.	v. 37.	ff. 47.
c. 18.	m. 28.	w. 38.	gg. 48.

d. 19.	n. 29.	x. 39.	hh. 49.
e. 20.	o. 30.	y. 40.	ii. 50.
f. 21.	p. 31.	z. 41.	jj. 51.
g. 22.	q. 32.	aa. 42.	kk. 52.
h. 23.	r. 33.	bb. 43.	ll. 53.
i. 24.	s. 34.	cc. 44.	mm. 54.
j. 25.	t. 35.	dd. 45.	nn. 55.

9. For each of the age classes set out under number 8, *supra*, what is the maximum number of division of \$1000.00 certificates ever existing for the State of Alabama?

10. For each of the age classes as listed in #8 *supra*, how many division of \$1000.00 certificates existed for the State of Alabama on December 31, 1940?

11. On what respective dates did Preferred Life Assurance Society first receive a license to do business in each of the following States?

- | | |
|--------------------|-----------------|
| a. Florida. | d. Louisiana. |
| b. Georgia. | e. Mississippi. |
| c. South Carolina. | f. Tennessee. |

12. On said date on which Preferred Life Assurance Society first received a license to do business in Florida, how many divisions of \$1000.00 certificates were set up for said State of Florida for each of the following age classes?

a. 16.	k. 26.	u. 36.	ee. 46.
b. 17.	l. 27.	v. 37.	ff. 47.
c. 18.	m. 28.	w. 38.	gg. 48.
d. 19.	n. 29.	x. 39.	hh. 49.
e. 20.	o. 30.	y. 40.	ii. 50.
f. 21.	p. 31.	z. 41.	jj. 51.
g. 22.	q. 32.	aa. 42.	kk. 52.
h. 23.	r. 33.	bb. 43.	ll. 53.
i. 24.	s. 34.	cc. 44.	mm. 54.
j. 25.	t. 35.	dd. 45.	nn. 55.

13. On said date on which Preferred Life Assurance Society first received a license to do business in Georgia, how [fol. 17] many divisions of \$1000.00 certificates were set up for said State of Georgia for each of the age classes as set out in #12, *supra*.

14. On said date on which Preferred Life Assurance Society first received a license to do business in South Caro-

lina, how many divisions of \$1000.00 certificates were set up for said State of South Carolina for each of the age classes as set out in #12, *supra*.

15. On said date on which Preferred Life Assurance Society first received a license to do business in Louisiana, how many divisions of \$1000.00 certificates were set up for said State of Louisiana for each of the age classes as set out in #12 *supra*.

16. On said date on which Preferred Life Assurance Society first received a license to do business in Mississippi, how many divisions of \$1000.00 certificates were set up for said State of Mississippi for each of the age classes as set out in #12, *supra*.

17. On said date on which Preferred Life Assurance Society first received a license to do business in Tennessee, how many divisions of \$1000.00 certificates were set up for said State of Tennessee for each of the age classes as set out in #12, *supra*.

18. For each of the following age classes, what is the maximum number of divisions of \$1000.00 certificates ever existing for the State of Florida?

a. 16.	k. 26.	u. 36.	ee. 46.
b. 17.	l. 27.	v. 37.	ff. 47.
c. 18.	m. 28.	w. 38.	gg. 48.
d. 19.	n. 29.	x. 39.	hh. 49.
e. 20.	o. 30.	y. 40.	ii. 50.
f. 21.	p. 31.	z. 41.	jj. 51.
g. 22.	q. 32.	aa. 42.	kk. 52.
h. 23.	r. 33.	bb. 43.	ll. 53.
i. 24.	s. 34.	cc. 44.	mm. 54.
j. 25.	t. 35.	dd. 45.	nn. 55.

19. For each of the age classes as set out in #18, *supra*, what is the maximum number of divisions of \$1000.00 certificates ever existing for the State of Georgia.

[fol. 18] 20. For each of the age classes as set out in No. 18, *supra*, what is the maximum number of divisions of \$1000.00 certificates ever existing for the State of South Carolina.

21. For each of the age classes as set out in No. 18, *supra*, what is the maximum number of divisions of \$1000.00 certificates ever existing for the State of Louisiana.

22. For each of the age classes as set out in No. 18, *supra*, what is the maximum number of divisions of \$1000.00 certificates ever existing for the State of Mississippi.

23. For each of the age classes as set out in No. 18, *supra*, what is the maximum number of divisions of \$1000.00 certificates ever existing for the State of South Carolina.

24. For each of the following age classes, how many divisions of \$1000.00 certificates existed for the State of Florida on December 31, 1940?

a. 16.	k. 26	u. 36.	ee. 46.
b. 17.	l. 27.	v. 37.	ff. 47.
c. 18.	m. 28.	w. 38.	gg. 48.
d. 19.	n. 29.	x. 39.	hh. 49.
e. 20.	o. 30.	y. 40.	ii. 50.
f. 21.	p. 31.	z. 41.	jj. 51.
g. 22.	q. 32.	aa. 42.	kk. 52.
h. 23.	r. 33.	bb. 43.	ll. 53.
i. 24.	s. 34.	cc. 44.	mm. 54.
j. 25.	t. 35.	dd. 45.	nn. 55.

25. For each of the age classes as set out in No. 24, *supra*, how many divisions of \$1000.00 certificates existed for the State of Georgia on December 31, 1940?

26. For each of the age classes as set out in No. 24, *supra*, how many divisions of \$1000.00 certificates existed for State of Louisiana on December 31, 1940?

27. For each of the age classes as set out in No. 24, *supra*, how many divisions of \$100.00 certificates existed for the State of Louisiana on December 31, 1940?

28. For each of the age classes as set out in No. 24, *Supra*, how many divisions of \$1000.00 certificates existed for the State of Mississippi on December 31, 1940?

[fol. 19] 29. For each of the age classes as set out in No. 24, *supra*, how many divisions of \$1000.00 certificates existed for the State of Tennessee on December 31, 1940?

30. Does Preferred Life Assurance Society issue certificates of any other face value than \$1000.00?

31. If the answer to Interrogatory No. 30 is "Yes," the same information is required for such group of certificates

of the same face value (e. g., for \$500.00 certificates, or for \$100.00 certificates) as is required for the \$1000.00 certificates in Interrogatories Nos. 3 through 29, both inclusive).

[fol. 20] Part II. Number of Members in Divisions

32. For each of the states in which Preferred Life Assurance Society does business, give:

(a) The maximum number of members the Society has ever attained.

(b) The year in which such maximum was attained.

33. For each of the states in which the Society does business, how many members did it have on December 31, 1940?

34. For the State of Alabama, what is the highest Position Number ever sold in any division in each of the following age classes?

a. 16.	k. 26.	u. 36.	ee. 46.
b. 17.	l. 27.	v. 37.	ff. 47.
c. 18.	m. 28.	w. 38.	gg. 48.
d. 19.	n. 29.	x. 39.	hh. 49.
e. 20.	o. 30.	y. 40.	ii. 50.
f. 21.	p. 31.	z. 41.	jj. 51.
g. 22.	q. 32.	aa. 42.	kk. 52.
h. 23.	r. 33.	bb. 43.	ll. 53.
i. 24.	s. 34.	cc. 44.	mm. 54.
j. 25.	t. 35.	dd. 45.	nn. 55.

35. For the State of Florida, what is the highest Position Number ever sold in any division in each of the age classes set out in #34, *supra*.

36. For the State of Georgia, what is the highest Position Number ever sold in any division in each of the age classes set out in #34, *supra*.

37. For the State of South Carolina, what is the highest Position Number ever sold in any division in each of the age classes set out in #34, *supra*.

38. For the State of Louisiana, what is the highest Position Number ever sold in any division in each of the age classes set out in #34, *supra*.

39. For the State of Mississippi, what is the highest Position Number ever sold in any division in each of the age classes set out in #34, *supra*.

[fol. 21] 40. For the State of Tennessee, what is the highest Position Number ever sold in any division in each of the age classes set out in #34, *supra*.

41. For the State of Alabama, on December 31, 1940 what was the highest Position Number existing in any division in each of the following age classes?

a. 16.	k. 26.	u. 36.	ee. 46.
b. 17.	l. 27.	v. 37.	ff. 47.
c. 18.	m. 28.	w. 38.	gg. 48.
d. 19.	n. 29.	x. 39.	hh. 49.
e. 20.	o. 30.	y. 40.	ii. 50.
f. 21.	p. 31.	z. 41.	jj. 51.
g. 22.	q. 32.	aa. 42.	kk. 52.
h. 23.	r. 33.	bb. 43.	ll. 53.
i. 24.	s. 34.	cc. 44.	mm. 54.
j. 25.	t. 35.	dd. 45.	nn. 55.

42. For the State of Florida, on December 31, 1940 what was the highest Position Number existing in any division in each of the age classes set out in 41 *supra*.

43. For the State of Georgia, on December 31, 1940 what was the highest Position Number existing in any division in each of the age classes set out in 41 *supra*.

44. For the State of South Carolina, on December 31, 1940 what was the highest Position Number existing in any division in each of the age classes set out in 41 *supra*.

45. For the State of Louisiana, on December 31, 1940 what was the highest Position Number existing in any division in each of the age classes set out in 41 *supra*.

46. For the State of Mississippi, on December 31, 1940 what was the highest Position Number existing in any division in each of the age classes set out in 41 *supra*.

47. For the State of Tennessee, on December 31, 1940 what was the highest Position Number existing in any division in each of the age classes set out in 41 *supra*.

48. For the State of Alabama, how many empty divisions [fol. 22] existed in each of the following age classes on December 31, 1934?

a. 16.	k. 26.	u. 36.	ee. 46.
b. 17.	l. 27.	v. 37.	ff. 47.
c. 18.	m. 28.	w. 38.	gg. 48.
d. 19.	n. 29.	x. 39.	hh. 49.
e. 20.	o. 30.	y. 40.	ii. 50.
f. 21.	p. 31.	z. 41.	jj. 51.
g. 22.	q. 32.	aa. 42.	kk. 52.
h. 23.	r. 33.	bb. 43.	ll. 53.
i. 24.	s. 34.	cc. 44.	mm. 54.
j. 25.	t. 35.	dd. 45.	nn. 55.

49. For the State of Alabama, how many empty divisions existed in each of the age classes set out in 48 *supra*, as of December 31, 1935.

50. For the State of Alabama, how many empty divisions existed in each of the age classes set out in 48 *supra*, as of December 31, 1936.

51. For the State of Alabama, how many empty divisions existed in each of the age classes set out in 48 *supra*, as of December 31, 1937.

52. For the State of Alabama, how many empty divisions existed in each of the age classes set out in 48 *supra*, as of December 31, 1938.

53. For the State of Alabama, how many empty divisions existed in each of the age classes set out in 48 *supra*, as of December 31, 1939.

54. For the State of Alabama, how many empty divisions existed in each of the age classes set out in 48 *supra*, as of December 31, 1940.

55. For the State of Florida, how many empty divisions existed in each of the age classes set out in 48 *supra*, as of December 31, 1935.

56. For the State of Florida, how many empty divisions existed in each of the age classes set out in 48 *supra*, as of December 31, 1936.

57. For the State of Florida, how many empty divisions [fol. 23] existed in each of the age classes set out in 48 *supra*, as of December 31, 1937.

58. For the State of Florida, how many empty divisions existed in each of the age classes set out in 48 *supra*, as of December 31, 1938.

59. For the State of Florida, how many empty divisions existed in each of the age classes set out in 48 *supra*, as of December 31, 1939.

60. For the State of Florida, how many empty divisions existed in each of the age classes set out in 48 *supra*, as of December 31, 1940.

61. For the State of Georgia, how many empty divisions existed in each of the following age classes as of December 31, 1934?

a. 16.	k. 26.	u. 36.	ee. 46.
b. 17.	l. 27.	v. 37.	ff. 47.
c. 18.	m. 28.	w. 38.	gg. 48.
d. 19.	n. 29.	x. 39.	hh. 49.
e. 20.	o. 30.	y. 40.	ii. 50.
f. 21.	p. 31.	z. 41.	jj. 51.
g. 22.	q. 32.	aa. 42.	kk. 52.
h. 23.	r. 33.	bb. 43.	ll. 53.
i. 24.	s. 34.	cc. 44.	mm. 54.
j. 25.	t. 35.	dd. 45.	nn. 55.

62. For the State of Georgia, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1935.

63. For the State of Georgia, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1936.

64. For the State of Georgia, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1937.

65. For the State of Georgia, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1938.

[fol. 24] 66. For the State of Georgia, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1939.

67. For the State of Georgia, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1940.

68. For the State of South Carolina, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1935.

69. For the State of South Carolina, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1936.

70. For the State of South Carolina, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1937.

71. For the State of South Carolina, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1938.

72. For the State of South Carolina, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1939.

73. For the State of South Carolina, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1940.

74. For the State of Louisiana, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1935.

75. For the State of Louisiana, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1936.

[fol. 25] 76. For the State of Louisiana, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1937.

77. For the State of Louisiana, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1938.

78. For the State of Louisiana, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1939.

79. For the State of Louisiana, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1940.

80. For the State of Mississippi, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1935.

81. For the State of Mississippi, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1936.

82. For the State of Mississippi, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1937.

83. For the State of Mississippi, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1938.

84. For the State of Mississippi, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1939.

85. For the State of Mississippi, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1940.

[fol. 26] 86. For the State of Tennessee, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1935.

87. For the State of Tennessee, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1936.

88. For the State of Tennessee, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1937.

89. For the State of Tennessee, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1938.

90. For the State of Tennessee, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1939.

* 91. For the State of Tennessee, how many empty divisions existed in each of the age classes set out in 61 *supra*, as of December 31, 1940.

92. State whether or not during the years 1933 or 1934 one Arthur Samuel Jones, Peach Orchard Route, Augusta, Georgia, refused a \$1000.00 certificate, Position No. unknown, for the reason that the position offered him was too high.

93. State whether or not other persons have ever refused a certificate for the reason that the position offered was too high.

94. How many persons have refused a certificate for the reason that the position offered was too high?

95. Has the Society ever sold a \$1000.00 certificate Position No. 25?

(If answer is yes—give date of issue of policy, name and address of assured.)

96. Has the Society ever sold a \$1000.00 certificate Position No. 24?

(If answer is yes—give date of issue of policy, name and address of assured).

97. What is the highest position number ever sold by the Society?

(Give date of issue of policy, name and address of assured).

Part III. Number of Field Agents Selling Contingent Endowment Insurance

98. State whether or not the field agents of the Society are termed "organizers"?

99. For the State of Alabama, how many organizers or agents represented the Society on each of the following dates?

- a. Date on which charter received
- b. December 31, 1930.
- c. December 31, 1931.

- d. December 31, 1932.
- e. December 31, 1936.
- f. December 31, 1937.
- g. December 31, 1938.
- h. December 31, 1939.
- i. December 31, 1940.

100. For the State of Florida, how many organizers or agents represented the society on each of the following dates?

- a. Date on which license received.
- b. December 31, 1934.
- c. December 31, 1935.
- d. December 31, 1936.
- e. December 31, 1937.
- f. December 31, 1938.
- g. December 31, 1939.
- h. December 31, 1940.

101. For the State of Georgia, how many organizers or agents represented the Society on each of the following dates?

- a. Date on which license received.
- b. December 31, 1934.
- c. December 31, 1935.
- d. December 31, 1936.
- e. December 31, 1937.
- f. December 31, 1938.
- g. December 31, 1939.
- h. December 31, 1940.

102. For the State of South Carolina, how many organizers or agents represented the Society on each of the following dates?

- a. Date on which license received.
- b. December 31, 1934.
- c. December 31, 1935.
- d. December 31, 1936.
- e. December 31, 1937.
- f. December 31, 1938.
- g. December 31, 1939.
- h. December 31, 1940.

103. For the State of Louisiana, how many organizers or agents represented the Society on each of the following dates?

- a. Date on which license received.
- e. December 31, 1937.
- [fol. 28] b. December 31, 1934.
- c. December 31, 1935.
- d. December 31, 1936.
- f. December 31, 1938.
- g. December 31, 1939.
- h. December 31, 1940.

104. For the State of Mississippi, how many organizers or agents represented the Society on each of the following dates?

- a. Date on which license received.
- b. December 31, 1934.
- c. December 31, 1935.
- d. December 31, 1936.
- e. December 31, 1937.
- f. December 31, 1938.
- g. December 31, 1939.
- h. December 31, 1940.

105. For the State of Tennessee, how many organizers or agents represented the Society on each of the following dates?

- a. Date on which license received.
- b. December 31, 1934.
- c. December 31, 1935.
- d. December 31, 1936.
- e. December 31, 1937.
- f. December 31, 1938.
- g. December 31, 1939.
- h. December 31, 1940.

106. State whether or not W. Guy Longshore was not one of the corporators and one of the original Board of Trustees of Preferred Life Assurance Society.

107. State whether or not the said W. Guy Longshore is not now general agent for a certain fraternal benefit society incorporated under the laws of the State of Georgia, and having its principal office in Atlanta, Georgia, and known

as First National Insurance Company, First National Assurance Society, or some similar name?

108. When did the said W. Guy Longshore resign his office as a member of the Board of Trustees of Preferred Life Assurance Society?

109. When was the said First National Insurance Company chartered by the State of Georgia?

110. Other than the said W. Guy Longshore, for each of the following states how many former organizers or agents of Preferred Life Assurance Society are now organizers or agents for said First National Insurance Company?

- a. Alabama.
- b. Florida.
- c. Georgia.
- d. South Carolina.

111. State whether or not the said First National Insurance Company engages in the business of writing contingent endowment insurance?

Part IV. Officers and Directors

112. State whether or not M. M. Longshore is not the wife of one Spencer H. Longshore.

113. What is the blood relationship between Spencer H. Longshore and W. Guy Longshore?

114. State whether or not the said Spencer H. Longshore is now the General Agent of Preferred Life Assurance Society, holding an overwriting contract with said Society.

115. State whether or not the said Spencer H. Longshore and W. Guy Longshore, either or both, were not prior to the year 1928 agents or organizers for the Liberty National Insurance Company of Birmingham, Ala.?

116. How long was Spencer H. Longshore an agent or organizer for said Liberty National Insurance Company?

117. How long was W. Guy Longshore an agent or organizer for the said Liberty National Insurance Company?

118. State whether or not the said Liberty National Insurance Company, during the year 1928 and for many years

prior thereto, wrote the form of insurance known as contingent endowment insurance and described in Paragraph 5 of the bill of complaint in this action?

119. State whether or not any of the following persons were ever agents or organizers for said Liberty National Insurance Company?

- a. Travis H. Justice.
- b. Joseph E. Justice.
- c. M. M. Longshore.
- d. F. A. Rogers.
- e. Olive Ware.
- f. R. D. Carlton.
- g. Guy I. Badger.
- h. B. Cosby Bird.
- i. J. J. Warren.
- k. F. M. Phillippi.

[fol. 30] 120. State whether or not any of the following persons have ever been connected with any contingent endowment insurance company other than Preferred Life Assurance Society or Liberty National Insurance Co.?

- a. Spencer H. Longshore.
- b. W. Guy Longshore.
- c. M. M. Longshore.
- d. Travis H. Justice.
- e. Joseph E. Justice.
- f. F. A. Rogers.
- g. Olive Ware.
- h. R. D. Carlton.
- i. Guy T. Badger.
- j. B. Cosby Bird.
- k. J. J. Warren.
- l. F. M. Phillippi.

121. If the answer to Interrogatory No. 118 is "Yes", state for each persons so connected the following:

- a. The name of the company.
- b. The location of its principal office.
- c. The nature of the connection.
- d. The length of time the connection continued.
- e. When the connection terminated.
- f. Whether or not such company is still in business.
- g. The date when such company ceased to do business.

122. State whether or not any of the following persons were ever connected with a contingent endowment insurance company doing business in the State of Indiana?

- a. Spencer H. Longshore.
- b. W. Guy Longshore.
- c. M. M. Longshore.
- d. Travis H. Justice.
- e. Joseph E. Justice.
- f. F. A. Rogers.
- g. Olive Ware.
- h. R. D. Carlton.
- i. Guy I. Badger.
- j. B. Cosby Bird.
- k. J. J. Warren.
- l. F. M. Phillippi.

123. If the answer to Interrogatory No. 120 is "Yes", state the following for each person so connected:

- a. The name of the company.
- b. The location of its principal office.
- c. The nature of the connection.
- d. The length of time the connection continued.
- e. When the connection terminated.
- f. Whether or not such company is still in business.
- g. The date when such company ceased to do business.

124. For each person named in Interrogatory Nos. 120 and 122, give the following information:

- a. Names of all insurance companies with which each such person has been connected.
- b. State of charter of each such company.
- c. Location of principal office of each such company.
- d. Whether each such company was stock, mutual, fraternal non-profit, or otherwise.
- e. Nature of business done by each such company.
- f. Position held with each such company.

[fol. 31] g. Date or dates on which connection with each such company commenced.

h. Date or dates on which connection with each such company ended.

i. Whether any of said companies have ceased to do business.

j. Date or dates on which each such company ceased to do business.

k. Whether or not any such company ceased to do business by reason of having to call an assessment on the policyholders.

125. State whether or not Spencer H. Longshore and W. Guy Longshore were organizers of Preferred Life Assurance Society.

126. If the answer to Interrogatory No. 125 is "No", who was or were such organizers?

127. Give the name, home address, and title of each officer of Preferred Life Assurance Society on each of the following dates:

- | | |
|------------------------|-----------------------|
| (a) December 31, 1928. | g. December 31, 1934. |
| b. December 31, 1929. | h. December 31, 1935. |
| c. December 31, 1930. | i. December 31, 1936. |
| d. December 31, 1931. | j. December 31, 1937. |
| e. December 31, 1932. | k. December 31, 1938. |
| f. December 31, 1933. | l. December 31, 1939. |
| | m. December 31, 1940. |

128. Give the name, occupation, employer's name, business address, and home address of each member of the Board of Trustees of Preferred Life Assurance Society on each of the following dates:

- | | |
|------------------------|-----------------------|
| (a) December 31, 1928. | g. December 31, 1934. |
| b. December 31, 1929. | h. December 31, 1935. |
| c. December 31, 1930. | i. December 31, 1936. |
| d. December 31, 1931. | j. December 31, 1937. |
| e. December 31, 1932. | k. December 31, 1938. |
| f. December 31, 1933. | l. December 31, 1939. |
| | m. December 31, 1940. |

129. Give the salary received by the Supreme President of Preferred Life Assurance Society for each of the following years:

- | | |
|----------|----------|
| a. 1929. | g. 1935. |
| b. 1930. | h. 1936. |
| c. 1931. | i. 1937. |
| d. 1932. | j. 1938. |
| e. 1933. | k. 1939. |
| f. 1934. | l. 1940. |

130. Give the commissions received by said Supreme [fol. 32] President from Preferred Life Assurance Society during each of the following years:

- | | |
|----------|----------|
| a. 1929. | g. 1935. |
| b. 1930. | h. 1936. |
| c. 1931. | i. 1937. |
| d. 1932. | j. 1938. |
| e. 1933. | k. 1939. |
| f. 1934. | l. 1940. |

131. Give the total income received by said Supreme President from said Preferred Life Assurance Society during each of the following years:

- | | |
|----------|----------|
| a. 1929. | g. 1935. |
| b. 1930. | h. 1936. |
| c. 1931. | i. 1937. |
| d. 1932. | j. 1938. |
| e. 1933. | k. 1939. |
| f. 1934. | l. 1940. |

132. Give the salary received by Spencer H. Longshore for each of the following years:

- | | |
|----------|----------|
| a. 1929. | g. 1935. |
| b. 1930. | h. 1936. |
| c. 1931. | i. 1937. |
| d. 1932. | j. 1938. |
| e. 1933. | k. 1939. |
| f. 1934. | l. 1940. |

133. Give the commissions received by said Spencer H. Longshore for each of the following years:

- | | |
|----------|----------|
| a. 1929. | g. 1935. |
| b. 1930. | h. 1936. |
| c. 1931. | i. 1937. |
| d. 1932. | j. 1938. |
| e. 1933. | k. 1939. |
| f. 1934. | l. 1940. |

134. Give the total income received by said Spencer H. Longshore for each of the following years:

- | | |
|----------|----------|
| a. 1929. | g. 1935. |
| b. 1930. | h. 1936. |
| c. 1931. | i. 1937. |

d. 1932.

e. 1933.

f. 1934.

j. 1938.

k. 1939.

l. 1940.

135. Give the salary received by W. Guy Longshore for each of the following years:

a. 1929.

b. 1930.

c. 1931.

d. 1932.

e. 1933.

g. 1935.

h. 1936.

i. 1937.

j. 1938.

k. 1939.

l. 1940.

[fol. 33] 136. Give the commissions received by said W. Guy Longshore for each of the following years:

a. 1929.

b. 1930.

c. 1931.

d. 1932.

e. 1933.

f. 1934.

g. 1935.

h. 1936.

i. 1937.

j. 1938.

k. 1939.

l. 1940.

137. Give the total income received by said W. Guy Longshore for each of the following years:

a. 1929.

b. 1930.

c. 1931.

d. 1932.

e. 1933.

f. 1934.

g. 1935.

h. 1936.

i. 1937.

j. 1938.

k. 1939.

l. 1940.

138. Give the salary received by M. M. Longshore for each of the following years:

a. 1929.

b. 1930.

c. 1931.

d. 1932.

e. 1933.

f. 1934.

g. 1935.

h. 1936.

i. 1937.

j. 1938.

k. 1939.

l. 1940.

139. Give the commissions received by said M. M. Longshore for each of the following years:

a. 1929.

b. 1930.

c. 1931.

g. 1935.

h. 1936.

i. 1937.

d. 1932.

e. 1933.

f. 1934.

j. 1938.

k. 1939.

l. 1940.

140. Give the total income received by said M. M. Longshore for each of the following years:

a. 1929.

b. 1930.

c. 1931.

d. 1932.

e. 1933.

f. 1934.

g. 1935.

h. 1936.

i. 1937.

j. 1938.

k. 1939.

l. 1940.

[fol. 34] Part V—*Connection Between Preferred Life and First National Life.*

141. State whether or not the First National Insurance Company, with home office in Atlanta, Georgia, is possessed of a list of the policyholders of Preferred Life Assurance Society.

142. State whether or not the said First National Insurance Company has not sold more than \$500,000 worth of contingent endowment insurance in the State of Alabama.

143. State whether or not a large proportion of such sale in the State of Alabama were not of Position No. 1.

144. State whether or not such sales were enabled to be accomplished by the use of the said list of policyholders of Preferred Life Assurance Society.

145. State whether or not there is a re-insurance agreement between the said First National Insurance Company and Preferred Life Assurance Society.

146. When did said First National Insurance Company receive its charter from the State of Georgia?

147. How many persons hold policies with both First National Insurance Company and Preferred Life Assurance Society?

148. How many of such persons have permitted their policies to lapse with Preferred Life Assurance Society after having received policies with First National Insurance Company?

Part VI—Fraternal Workings of Preferred Life Assurance Society.

149. On August 28, 1928 how many subordinate lodges did Preferred Life Assurance Society have in the State of Alabama?

150. Where was each such lodge located?

151. How many officers did each such subordinate lodge have on said August 28, 1928?

152. Give the location of each subordinate lodge of Preferred Life Assurance Society in the State of Alabama on [fol. 35] each of the following dates:

- | | |
|----------------------|----------------------|
| a. December 31, 1934 | e. December 31, 1938 |
| b. December 31, 1935 | f. December 31, 1939 |
| c. December 31, 1936 | g. December 31, 1940 |
| d. December 31, 1937 | |

153. Give the name, address, and title of each local officer of each subordinate lodge in the State of Alabama, and also whether any such local officers were agents ("organizers") of Preferred Life Assurance Society, specifying such as were agents ("organizers.") for each of the following dates:

- | | |
|----------------------|----------------------|
| a. December 31, 1934 | e. December 31, 1938 |
| b. December 31, 1935 | f. December 31, 1939 |
| c. December 31, 1936 | g. December 31, 1940 |
| d. December 31, 1937 | |

154. Give the location of each subordinate lodge of Preferred Life Assurance Society in the State of Florida on each of the following dates:

- | | |
|----------------------|----------------------|
| a. December 31, 1934 | e. December 31, 1938 |
| b. December 31, 1935 | f. December 31, 1939 |
| c. December 31, 1936 | g. December 31, 1940 |
| d. December 31, 1937 | |

155. Give the location of each subordinate lodge of Preferred Life Assurance Society in the State of Georgia on each of the following dates:

- | | |
|----------------------|----------------------|
| a. December 31, 1934 | e. December 31, 1938 |
| b. December 31, 1935 | f. December 31, 1939 |
| c. December 31, 1936 | g. December 31, 1940 |
| d. December 31, 1937 | |

156. Give the location of each subordinate lodge of Preferred Life Assurance Society in the State of South Carolina on each of the following dates:

- | | |
|----------------------|----------------------|
| a. December 31, 1934 | e. December 31, 1938 |
| b. December 31, 1935 | f. December 31, 1939 |
| c. December 31, 1936 | g. December 31, 1940 |
| d. December 31, 1937 | |

157. Give the name, address, and title of each local officer of each subordinate lodge in the State of Florida, and also whether any such local officers were agents ("organizers") [fol. 36] of Preferred Life Assurance Society, specifying such as were agents ("organizers"), for each of the following dates:

- | | |
|----------------------|----------------------|
| a. December 31, 1934 | e. December 31, 1938 |
| b. December 31, 1935 | f. December 31, 1939 |
| c. December 31, 1936 | g. December 31, 1940 |
| d. December 31, 1937 | |

158. Give the name, address, and title of each local officer of each subordinate lodge in the State of Georgia, and also whether any such local officers were agents ("organizers") of Preferred Life Assurance Society, specifying such as were agents ("organizers"), for each of the following dates:

- | | |
|----------------------|----------------------|
| a. December 31, 1934 | e. December 31, 1938 |
| b. December 31, 1935 | f. December 31, 1939 |
| c. December 31, 1936 | g. December 31, 1940 |
| d. December 31, 1937 | |

159. Give the name, address, and title of each local officer of each subordinate lodge in the State of South Carolina, and also whether any such local officers were agents ("organizers") of Preferred Life Assurance Society, specifying such as were agents ("organizers"), for each of the following dates:

- | | |
|----------------------|----------------------|
| a. December 31, 1934 | e. December 31, 1938 |
| b. December 31, 1935 | f. December 31, 1939 |
| c. December 31, 1936 | g. December 31, 1940 |
| d. December 31, 1937 | |

160. In the State of Alabama, how was the membership at large notified of impending lodge meetings during each of the following years:

- | | |
|---------|---------|
| a. 1933 | e. 1937 |
| b. 1934 | f. 1938 |
| c. 1935 | g. 1939 |
| d. 1936 | h. 1940 |

161. In the State of Florida, how was the membership at large notified of impending lodge meetings during each of the following years:

- | | |
|---------|---------|
| a. 1933 | e. 1937 |
| b. 1934 | f. 1938 |
| c. 1935 | g. 1939 |
| d. 1936 | h. 1940 |

162. In the State of Georgia, how was the membership at large notified of impending lodge meetings during each [fol. 37] of the following years:

- | | |
|---------|---------|
| a. 1933 | e. 1937 |
| b. 1934 | f. 1938 |
| c. 1935 | g. 1939 |
| d. 1936 | h. 1940 |

163. In the State of South Carolina, how was the membership at large notified of impending lodge meetings during each of the following years:

- | | |
|---------|---------|
| a. 1933 | e. 1937 |
| b. 1934 | f. 1938 |
| c. 1935 | g. 1939 |
| d. 1936 | h. 1940 |

164. State whether or not the following is a correct outline of the method pursued by Preferred Life Assurance Society in adding members to local lodge rosters:

A prospective member is solicited by an organizer; makes application for a certificate; his application is favorably acted on by the Home Office; the Home Office sends him his certificate. He is thereafter without initiation or otherwise, and until default, carried as a member of the society.

165. How many of the Society's members in each of the following States have been actually elected to membership

by their respective subordinate lodges, prior to the time they received certificates of insurance:

- | | |
|-------------|--------------------|
| a. Alabama. | c. Georgia. |
| b. Florida. | d. South Carolina. |

166. How many of the Society's members have actually presented themselves for initiation at their respective subordinate lodges and been duly initiated at a regular lodge meeting, in each of the following States:

- | | |
|-------------|--------------------|
| a. Alabama. | c. Georgia. |
| b. Florida. | d. South Carolina. |

167. State whether or not a large proportion of the Society's membership is deemed to be "initiated at sight" without the necessity of formal initiation or attendance at [fol. 38] a regular meeting of the subordinate lodge.

168. If the answer to Interrogatory No. 167 is "Yes", state what is the procedure for "initiation at sight".

169. If the answer to Interrogatory No. 167 is "No", state whether or not initiation is required as a prerequisite before a certificate is delivered.

170. Give the date of each meeting of the Supreme Lodge of the Society.

171. For each such date, give the total membership of the Society in each of the following States:

- | | |
|-------------|--------------------|
| a. Alabama. | c. Georgia. |
| b. Florida. | d. South Carolina. |

172. For each such date, give the total membership of the Society.

173. At the Supreme Lodge meeting of the Society held in 1932, how many persons attended?

174. How many such persons were delegates and how many home office representatives (i. e., directors or officers)?

175. For each subordinate lodge of the Society in existence in 1932, state the number of delegates who attended the Supreme Lodge meeting held in that year.

176. Give the name and address of each delegate to the Supreme Lodge meeting of 1932 who was:

- a. Recorder of his local lodge.
- b. An agent or organizer of the Society, with his title.

177. At the Supreme Lodge meeting of the Society held in 1936, how many persons attended?

178. How many such persons were delegates and how many home office representatives (i. e., directors or officers)?

179. For each subordinate lodge of the Society in existence in 1936, state the number of delegates who attended the Supreme Lodge meeting held in that year.

[fol. 39] 180. Give the name and address of each delegate to the Supreme Lodge meeting of 1936 who was:

- a. Recorder of his local lodge.
- b. An agent or organizer of the Society, with his title.

181. At the Supreme Lodge meeting of the Society held in 1940, how many persons attended?

182. How many such persons were delegates and how many home office representatives (i. e., directors or officers)?

183. For each subordinate lodge of the Society in existence in 1940, state the number of delegates who attended the Supreme Lodge meeting held in that year.

184. Give the name and address of each delegate to the Supreme Lodge meeting of 1940 who was:

- a. Recorder of his local lodge.
- b. An agent or organizer of the Society, with his title.

185. From the records of the Society, give the following information relative to each local lodge in the State of Alabama for the year 1934:

- a. Numbers of members.
- b. Number attending each monthly lodge meeting.

186. From the records of the Society, give the following information relative to each local lodge in the State of Alabama for the year 1935:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

187. From the records of the Society, give the following information relative to each local lodge in the State of Alabama for the year 1936:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

188. From the records of the Society, give the following information relative to each local lodge in the State of Alabama for the year 1937:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

[fol. 40] 189. From the records of the Society, give the following information relative to each local lodge in the State of Alabama for the year 1938:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

190. From the records of the Society, give the following information relative to each local lodge in the State of Alabama for the year 1939:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

191. From the records of the Society, give the following information relative to each local lodge in the State of Alabama for the year 1940:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

192. From the records of the Society, give the following information relative to each local lodge in the State of Georgia for the year 1934:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

193. From the records of the Society, give the following information relative to each local lodge in the State of Georgia for the year 1935:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

194. From the records of the Society, give the following information relative to each local lodge in the State of Georgia for the year 1936:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

195. From the records of the Society, give the following information relative to each local lodge in the State of Georgia for the year 1937:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

[fol. 41] 196. From the records of the Society, give the following information relative to each local lodge in the State of Georgia for the year 1938:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

197. From the records of the Society, give the following information relative to each local lodge in the State of Georgia for the year 1939:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

198. From the records of the Society, give the following information relative to each local lodge in the State of Georgia for the year 1940:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

199. From the records of the Society, give the following information relative to each local lodge in the State of South Carolina for the year 1934:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

200. From the records of the Society, give the following information relative to each local lodge in the State of South Carolina for the year 1935:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

201. From the records of the Society, give the following information relative to each local lodge in the State of South Carolina for the year 1936:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

202. From the records of the Society, give the following information relative to each local lodge in the State of South Carolina for the year 1937:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

[fol. 42] 203. From the records of the Society, give the following information relative to each local lodge in the State of South Carolina for the year 1938:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

204. From the records of the Society, give the following information relative to each local lodge in the State of South Carolina for the year 1939:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

205. From the records of the Society, give the following information relative to each local lodge in the State of South Carolina for the year 1940:

- a. Number of members.
- b. Number attending each monthly lodge meeting.

206. State whether or not in each of the following States, it is the custom for the Society to issue any non-medical certificates—i. e., certificates without requiring a physical examination as a prerequisite to issuance of such certificates.

- a. Alabama.
- b. Georgia.
- c. South Carolina.

207. If such non-medical certificates are issued in any State, give the source of the authority giving the Society permission to write such certificates.

208. State whether or not the Preferred Life Assurance Society was organized for the purpose of making a profit for its organizers.

209. Has any member of Preferred Life Assurance Society ever received a dividend other than organizers, directors, or trustees?

210. Give total income from premiums and other investments of Preferred Life Assurance Society for the following years:

- | | |
|----------|----------|
| a. 1929. | g. 1935. |
| b. 1930. | h. 1936. |
| c. 1931. | i. 1937. |
| d. 1932. | j. 1938. |
| e. 1933. | k. 1939. |
| f. 1934. | l. 1940. |

[fol. 43] 211. State the amount of money paid on death and contingent endowment claims for the following years:

- | | | |
|---------|---------|---------|
| a. 1928 | f. 1933 | k. 1938 |
| b. 1929 | g. 1934 | l. 1939 |
| c. 1930 | h. 1935 | m. 1940 |
| d. 1931 | i. 1936 | |
| e. 1932 | j. 1937 | |

R. K. Wise; Wise & Whaley, 701 Liberty Life Bldg., Columbia, S. C.; R. B. Barnes, 1029 Frank Nelson Bldg., Birmingham, Alabama; W. H. Brantley, Jr., 1029 Frank Nelson Bldg., Birmingham, Alabama; Holley, Milner & Holley, Moore Bldg., Wetumpka, Ala.

[fol. 44] IN UNITED STATES DISTRICT COURT

ANSWER—Filed Feb. 13, 1941

Comes the defendant, Preferred Life Assurance Society, and for answer to the complaint in the above case says:

First Defense

The complaint fails to state a claim against this defendant upon which relief can be granted.

Second Defense

The Court lacks jurisdiction because the amount actually in controversy is less than \$3,000.00 exclusive of interest and costs.

Third Defense

The plaintiff, after full knowledge of the facts, has ratified and approved his contract with this defendant, and is barred of any relief by laches for that this defendant says: That on, to-wit, November 2, 1934 the plaintiff applied for membership in the defendant society and for a certificate of contingent endowment insurance, and upon said application, the defendant issued and delivered to plaintiff a contingent endowment insurance certificate designating the plaintiff's position as No. 5; that the plaintiff then knew that there were only four other members in said division; that this defendant has repeatedly informed the plaintiff in writing of the position which he held in said division, and of the number of members in his said division. Specifically this defendant informed the plaintiff in writing on, to-wit, January 10th, 1936 in accordance with a copy of a letter of said date hereto attached, marked Exhibit "D" and made a part hereof; that this defendant further informed the plaintiff in writing on, to-wit, April 4th, 1938 in accordance with a letter of said date, a copy of which is hereto [fol. 45] attached, marked Exhibit "E" and made a part hereof, and that this defendant informed the plaintiff in writing on, to-wit, January 31st 1940, in accordance with a letter, a copy of which is hereto attached, marked Exhibit "F" and made a part hereof. This defendant avers that the plaintiff has continuously from the time the plaintiff accepted said certificate of contingent endowment insurance until the present time, known that there were not 25 members in his said division, and that the matters and things which he claims were misrepresented to him were not in fact true, but nevertheless the said plaintiff has continued to pay his dues and premiums, and to carry out said contract, and has made no complaint to the defendant society until the filing of the summons and complaint in this cause. Wherefore, this defendant says that the plaintiff, with full knowledge of all of the facts, has ratified and approved his contract with the defendant and further is barred of any relief on account of laches.

Fourth Defense

The plaintiff's claim for relief by reason of defendant's alleged fraudulent misrepresentations to plaintiff is barred by the Alabama statute of limitations of one year.

[fol. 46]

Fifth Defense

Comes the defendant, Preferred Life Assurance Society, and for answer to the complaint in the above case says:

1. It admits the allegations contained in Paragraph 1 of said complaint.

2. It admits that Joseph E. Justice, J. J. Warren, and Spencer H. Longshore are trustees of the defendant, Preferred Life Assurance Society, and avers that there are other such trustees, viz: A. F. Whiting, R. D. Carlton, A. D. Merchant and W. G. Longshore, and it admits and avers that such trustees have the custody, control and management of the assets of said Society, and that each of them is over the age of 21 years, and that all of said trustees are residents of the Middle District of Alabama except A. D. Merchant who resides in Baton Rouge, Louisiana, and except W. G. Longshore who resides in Atlanta, Georgia. It denies that M. M. Longshore and F. M. Phillippi are officers, trustees, directors or agents of the defendant, Preferred Life Assurance Society, and avers that the said M. M. Longshore and F. M. Phillippi are not now connected with or employed by said defendant in any capacity. It denies that B. Crosby Bird is an officer, trustee, director or agent of the said defendant, but avers that the said B. Crosby Bird is the Medical Director of said defendant, and except for passing upon the health and physical risks of applicants for membership the said B. Crosby Bird has no voice in the management of the affairs of said Society.

3. A correct list of the trustees of the defendant with the places of their residences has been given in Paragraph #2 of this answer.

4. It denies that the bona fide purpose of this action is to reorganize the insurance department of the defendant, Preferred Life Assurance Society, but it admits that the plaintiff asks judgment as shown in the plaintiff's complaint in this cause. It admits that the insurance assets of the Preferred Life Assurance Society exceed one million dollars. It denies that the amount in controversy, exclusive of interest and costs, exceeds \$3,000.00, but avers that the only financial interest or claim which the plaintiff has against this defendant, or against either of the other defendants is [fol. 47] represented by his contingent endowment insur-

ance certificate #18497, Class (Age) 23, Division F (C), Position #4, upon which the plaintiff has paid to this defendant an aggregate total amount in dues of the sum of only \$202.35, and which said certificate if presently payable would be payable in the amount of only \$1,000.00, and that in no event would this plaintiff be entitled from this defendant to a greater sum than said \$1,000.00. It avers that the damages stated in the complaint are colorable, and are beyond the amount of any reasonable expectation of recovery, and that under the facts of the case the plaintiff has no reasonable expectation of recovering from this defendant an amount as great as \$3,000.00 exclusive of interest and costs. It avers that the claim for the amount of recovery as made in the complaint is made for the purpose of bringing this action within the jurisdiction of this Court, and that as a matter of fact the claim of the plaintiff in this cause does not really and substantially involve a controversy properly within the jurisdiction of this court.

5. It admits that this defendant writes a form of insurance known as contingent endowment insurance; that the certificates issued by this defendant for contingent endowment insurance are in the uniform amount of \$1,000.00, and no such certificates are issued for more or less than that amount; that the form of certificate for contingent endowment insurance issued by this defendant at the time that the plaintiff became a member of this defendant society is shown by a sample copy of such certificate attached to this answer and marked Exhibit "A"; that the form of contingent endowment certificate now issued by this defendant society and which has been the form in use for the past several years is shown by a sample copy of such form of certificate attached to this answer and marked Exhibit "B"; that for the purposes of contingent endowment fund distribution all certificates which participate therein are grouped in classes according to age as shown at the time the certificate is issued, and in each class there are 25 divisions or more as authorized and limited by an Act of the Legislature of Alabama approved July 30th, 1931, and [fol. 48] each division may contain no more than 25 members. The certificate holders of each division are numbered from 1 to 25 inclusive. Member No. 1 is the certificate holder who has been in his division the longest period of time. When a death occurs in any division the dead mem-

ber's beneficiary receives the face amount of the dead member's insurance as a death claim, and the living member in good standing who holds the lowest position in the same division collects the face amount of his own insurance as a living claim, and his certificate is forthwith cancelled. By reason of the fact that upon the death of any member holding a certificate in the face amount of \$1,000.00 there is paid by the defendant society the said amount of \$1,000.00 and an additional amount of \$1,000.00 as a living benefit to the living member in good standing who holds the lowest position in the same division, that is, the total sum of \$2,000.00 is paid by the defendant society upon the death of any member, the premiums charged are necessarily higher than the premium for an ordinary \$1,000.00 certificate. The amounts of said premiums are arrived at on a scientific actuarial basis, and are fair and reasonable. The amounts of said premiums are required by the Superintendent of Insurance of the State of Alabama to be actuarially adequate, and the amounts of premiums charged by defendant society have in each instance been approved by the Superintendent of Insurance of the State of Alabama, and are in line with premiums required by reputable life insurance companies throughout the United States. It denies that the essence of the contract is that there be at all times 25 members in each division, and it denies that the Society binds itself at all times to keep and maintain each division at a strength of 25 members. It avers that the plaintiff could in no event have been No. 5 at the time he became a member of the defendant society if such averments were true. It avers that the plan of insurance is for a certain number of divisions, and in each division there may be not more than 25 members, but it is not contemplated, and in fact is impossible to keep and maintain 25 members at all times in each division.

6. This defendant admits that on November 2, 1934 the [fol. 49] plaintiff applied for membership in the defendant society and for a certificate of contingent endowment insurance issued by this defendant society, and the defendant attaches to this answer a photostatic copy of the plaintiff's said application and marks the same Exhibit "C" and makes the same a part of this answer. This defendant denies emphatically those portions of Paragraph 6 of the complaint alleging that its agent made the representations

made by plaintiff to have been made and claimed to be untrue. It avers that no agent had any authority to make any such representations, and that the terms of the application of the plaintiff for membership in this defendant society, and for certificate of contingent endowment insurance are plainly set forth in the written application, and that no agent has any authority to vary the terms of said application. It denies that plaintiff believed any such representations or relied upon any such representations.

7. It admits that upon the plaintiff's application the defendant issued and delivered to the plaintiff contingent endowment insurance certificate #18497 Class (Age) 23, Division F (C), Position #5. It admits that the plaintiff accepted the same and has paid the premiums or dues on the same in the aggregate amount of \$202.35. It denies that the plaintiff accepted said certificate in the reasonable belief that there were 25 members in his said division, and it avers that plaintiff knew at the time the position given him was No. 5, and that there were only four other members in the said division. It denies that the plaintiff has paid premiums on said certificate in the reasonable belief that there were at all times 25 members in his said division, and it avers and alleges that this defendant has repeatedly informed the plaintiff in writing of the position which he held in said division and of the number of members in his said division, and it avers that this defendant was ready and willing at all times to give to this plaintiff this information and any other legitimate information with regard to his class and divisions. It specifically avers that letters were mailed by this defendant to this plaintiff at the address to which his notices or premiums or dues were mailed, and which letters were never returned to this defendant and [fol. 50] were therefore received by said plaintiff; that a copy of a letter mailed by this defendant to said plaintiff on, to-wit, January 10th, 1936 is hereto attached, marked Exhibit "D" and made a part hereof; that a copy of a letter so mailed by this defendant to said plaintiff on, to-wit, April 4th, 1938 is hereto attached, marked Exhibit "E" and made a part hereof; that a copy of a letter so mailed by this defendant to said plaintiff on, to-wit, January 31st, 1940 is hereto attached, marked Exhibit "F" and made a part hereof. It avers that continuously from the time plaintiff accepted said certificate and until the present time

the plaintiff has known that there were not 25 members in his said division.

8. It denies that the plaintiff first learned in the early part of the year 1940 that there were not 25 members in his division but only 10 members of whom the plaintiff is No. 4, and it avers in fact as hereinbefore alleged in more detail in the seventh paragraph of this answer, that the plaintiff has at all times since the acceptance of his certificate known that there were not 25 members in his division, and that such information has been repeatedly given to the plaintiff by this defendant. It admits that the plaintiff was in the State of South Carolina when he made application for membership in the defendant society, and for a certificate of contingent endowment insurance, but it avers that the defendant society is incorporated under the laws of the State of Alabama and issued said certificate of contingent endowment insurance in the City of Montgomery, Alabama. It neither admits nor denies the conclusion that the plaintiff's contract of insurance is subject to the laws of the State of South Carolina. It emphatically denies that under the laws of said State, or under any other laws the defendant's actions have amounted to a fraudulent misrepresentation or to a breach of contract accompanied by a fraudulent act, either or both, and it emphatically denies that any action by defendant entitles the plaintiff under the laws of the State of South Carolina or any other laws to any damages either actual or vindictive.

9. This defendant admits that it has never had a division [fol. 51] containing 25 members, and that none of its divisions have ever contained more than ten or twelve members, but this defendant avers that it has made every reasonable effort to secure as many members as possible up to 25 members in each of its divisions, and that it is to this defendant's financial interest to secure as many members as possible in each division. This defendant emphatically denies that it has ever solicited business or accepted premiums through its agents, through the United States mails or in any other way upon the representations that all divisions contain 25 members, or upon any representation that all divisions were continually kept and maintained at 25 members.

10. This defendant denies that it has opened or started any division since the issuance to plaintiff of his insurance

certificate. It avers in fact that on, to-wit, July 30th, 1931 an Act of the Legislature of Alabama became a law (General Acts of Alabama of 1931, page 819) under which it was provided that benefit societies, including this defendant "shall not hereafter establish its policyholders or members into divisions or classes other than the divisions or classes actually containing subsisting policies or certificates when this Act shall become a law", and it avers that since July 30th, 1931, long before the plaintiff became a member of the defendant society, this defendant has not established its policyholders or members into new divisions or classes. It denies that this defendant has made no effort to fill the plaintiff's division and never had any intention of so doing, and it avers and alleges that it has continuously and actively sought to fill the plaintiff's division and all other divisions both before and since the plaintiff became a member of the defendant society, and has sought actively and aggressively to procure as many members in each division as it possibly could; that this defendant has had an increase in business in force and in the number of its members every year since the plaintiff has been a member of this defendant society; that for each of the years in which and since the plaintiff became a member of the defendant society, the defendant has procured new members, which new members have been added to existing divisions; that the amount of insurance issued by the defendant in each of said years is as follows: [fol. 52] lows:

Year	Amount
1934	\$3,551,550.00
1935	3,688,500.00
1936	3,232,250.00
1937	3,072,300.00
1938	2,724,050.00
1939	3,424,500.00
1940	3,724,000.00

That in excess of ninety percent. of such above total amount of insurance issued by the defendant society in each of said years was contingent endowment insurance; that this defendant now has employed more agents soliciting memberships and applications for certificates of contingent endowment insurance than at any time in the history of this society, and this defendant is now most actively and ag-

gressively seeking to procure as many members in each division as possible.

11. It admits that in the nature of things on an average a member in a division holding position No. 5 would be moved up to position No. 1, and thereafter his certificate would mature in a shorter period of time if there were 25 members in a division than if there were 10 members in the division, but this defendant denies that it has breached its contract with the plaintiff, and it denies that the plaintiff has been damaged by any act or omission on the part of this defendant.

12. This defendant, as hereinbefore averred, has not ceased to try to fill every division, but on the contrary is actively and aggressively endeavoring to fill every division, and in the year 1940 this defendant issued contracts of contingent endowment insurance for a larger amount than in the year 1934, in which year the plaintiff became a member of the defendant society; that this defendant did not organize the First National Insurance Company, or any other insurance company, but this defendant did enter into a contract under which it reinsured members for the First National Life Assurance Society of Atlanta, Georgia, which contract is the same as the contract of reinsurance which this defendant society has with the Lincoln National Life Insurance Company; that as the result of said reinsurance contract with First National Life Assurance Society this defendant has received a net benefit as shown by the list of [fol. 53] premiums received and claims paid as follows, to-wit:

Year	Premiums Received	Claims Paid
1936	\$ 817.75	\$ 2,000
1937	10,199.79	3,000
1938	15,746.56	7,400
1939	11,675.96	5,111
1940	6,412.44	9,302
	<hr/> \$44,852.50	<hr/> \$26,813

That from the premiums received for such reinsurance there are no commissions payable but that the entire amount of said premiums is for the benefit of this defendant and its members. This defendant denies that all or substantially all, or in fact any material numbers of the selling staff of

this defendant society have taken similar positions with the First National Insurance Company (correct Name First National Life Assurance Society); that no agents or members of the selling staff of Preferred Life Assurance Society have ever left this defendant society to go with said First National Company except agents who were considerably in debt to the Preferred Life Assurance Society, or agents who were greatly discouraged and were being approached by other companies selling the same type of certificate to act as representatives of such companies, and who would in any event have left the employment of the Preferred Life Assurance Society; that since the Preferred Life Assurance Society had a reinsurance agreement with said First National Society, such representatives were encouraged to go with said First National Society rather than with a company with which the Preferred Life Assurance Society did not have a reinsurance agreement; that at the present time to the best of this defendant's knowledge there are only two agents on the selling staff of the First National Life Assurance Society who formerly represented the Preferred Life Assurance Society; that the Preferred Life Assurance Society now has a large number of agents soliciting members for the issuance of contracts of contingent endowment insurance in the State of Georgia in which said First National Company has its Home Office, and that this defendant society in the year 1940 wrote approximately the [fol. 54] same amount of contingent endowment insurance in said State of Georgia as it did in the State of South Carolina in which latter State the said First National Society does not do business; that at the present time the total number of agents on the selling staff of the Preferred Life Assurance Society soliciting for contracts of contingent endowment insurance is larger than it has ever been in the history of this defendant society. This defendant further avers that it has mailed statements disclosing its financial condition to the plaintiff and every other member at least once each year, and that reports from Dunne & Co., a recognized company reporting on the financial condition of insurance companies, have been mailed to the plaintiff and to other members who pay on a monthly basis, as the plaintiff does, several times during each year along with the receipts and notices, and that if the plaintiff received receipts for his dues he received with such receipts such financial statements and reports from Dunne & Company.

This defendant denies each and every other allegation contained in Paragraph 12 of the complaint.

13. Defendant denies the allegations of Paragraph 13 of the complaint and avers that the compensation of the officers of the Society are reasonable and have been approved by the Insurance Department of the State of Alabama; that no compensation is paid to trustees and directors as such, and that the officers are paid stated salaries with the exception of General Manager whose compensation is on a commission basis established by contract with the Society when it was in its infancy, and whose compensation for years was small and incommensurate with the time devoted and efforts made for the advancement of the society; it avers that under the laws of its organization it is not required that the members shall be paid dividends; that under the careful and economical conduct of the affairs of this defendant it has accumulated a substantial surplus, same being as shown by the examiners from the Insurance Departments of Alabama and Mississippi as of December 31, 1939 in the sum of \$261,134.73; that following said report this defendant voluntarily gave without charge to its members paid-up and extended insurance as a part of their [fol. 55] certificates; that this was approved by the Insurance Department of the State of Alabama. This defendant avers that plaintiff and all other members of the Society are sent financial statements annually and often, as hereinbefore alleged, more frequently. It avers that it has never sought to conceal that it was a fraternal benefit society but rather to feature that fact, and its agents have been fully advised and instructed accordingly; that the certificate issued by this defendant specifically states in bold letters that it is a fraternal benefit society, that the application for membership signed by the applicant provides that the applicant shall present himself to the Lodge for initiation and for all ritualistic obligations of the Society. It avers that a special meeting of the Grand Lodge of the Society was held in the City of Montgomery on the 15th day of January, 1940, and that all certificate holders of the Society in South Carolina, as well as in other States, were fully notified and advised clearly as to the method for electing representatives to said Grand Lodge; that a copy of such notice is hereto attached, marked Exhibit "G" and made a part hereof; that meetings were held and repre-

representatives elected who did attend said Grand Lodge meeting; that the election of said delegates and the proceedings of the Grand Lodge were in strict conformity with the Insurance laws of the State of Alabama, and in accordance with the Constitution and By-laws of this Society, and were examined and approved by examiners appointed by the Insurance Department of the States of Alabama and Mississippi; that at said Grand Lodge meeting the salary of the President was reduced, and the contract with the General Manager was modified, and other economies were provided for; that there was also provided at said meeting the additional benefits to members of extended and paid-up insurance. It denies that medical examinations are required by the laws of the State of Alabama of applicants for membership in fraternal orders, and neither admits nor denies whether such medical examinations are required by the laws of the State of South Carolina. It admits that in many instances it has accepted members without requiring such members to undergo a physical or medical examination [fol. 56] if such members comply with the age limit prescribed in the defendant society's Constitution and By-Laws. It denies that it has accepted poor physical risks in South Carolina or elsewhere. It avers that in addition to the sworn answers of the applicant and the recommendation of the defendant's agent, the defendant receives through an independent investigating agency an exhaustive report effecting the health and habits of the applicant, and with relation to any matters effecting his insurable risk, and that such procedure has proven to be as satisfactory and effective as medical examination. It avers that women applicants above the age of forty, and men applicants above the age of forty-five are always required, regardless of the amount of insurance applied for, to undergo a physical and medical examination, and that all applicants, regardless of age, applying for more than \$1,000.00 insurance, are required to undergo a physical or medical examination. It avers that the soundness of the practice of the defendant society in accepting physical risks is demonstrated by the ratio of actual death experienced to expected mortality according to the American Experience Table of Mortality as listed below:

1935
1936

39.97%
42.03%

1937	35.46%
1938	30.56%
1939	29.32%
Five year average	35.47%

That the percentage of deaths among the members of this defendant society has, during the five years hereinabove listed, been greatly less than the percentage of deaths that would be anticipated according to the American Experience Table of Mortality, and has been in the percentage of such expected mortalities as hereinabove stated; that such experience demonstrates that this defendant has not accepted poor physical risks for membership.

14. It admits plaintiff received certificate premium notices, etc. through the United States mail, but it emphatically denies having lessened, much less abandoned, its efforts to fill the divisions of the Society. It denies that the contingent [fol. 57] endowment certificate of insurance is a lottery or is fraudulent in any manner, or that it is a wagering contract further than in the sense that all insurance might be said to some extent and in some ways to contain an element of chance. This objection to this form of policy was raised before a Three Judge Federal Court in Oklahoma—*Liberty National Life Insurance Company v. Reed*, 24 Fed. Sup. page 103—where it was duly considered and this form of insurance upheld by said Court. This form of policy has been specifically accepted and legalized by Legislative action in Alabama, and by statutory action in Georgia, South Carolina, Louisiana and Mississippi as well. The defendant denies each and every other averment contained in Paragraph 14 of the complaint.

15. This defendant admits that the plaintiff's certificate is in full force and effect, and he is a member in good standing of the defendant, Preferred Life Assurance Society, and has the same interest in the proper administration of said Society as every other member thereof. This defendant denies each and every other averment in Paragraph 15 of the complaint.

As further answer to the unfounded and unwarranted allegations of Paragraph 15 of the plaintiff's complaint, this

defendant lists its growth in assets and surplus from year to year as follows:

Year	Assets	Surplus
1929	\$ 2,410.25	\$ 1,268.04
1930	26,823.76	9,412.59
1931	60,160.51	16,999.84
1932	94,304.58	33,166.84
1933	171,267.16	44,411.66
1934	309,644.82	94,711.52
1935	442,985.68	147,388.92
1936	566,953.81	171,876.47
1937	705,925.79	192,417.54
1938	901,411.92	250,180.58
1939	1,062,503.28	267,896.29

This defendant avers that this continuous healthy growth [fol. 58] of this Society, even during the years of depression, was not a matter of accident but was the result of honest and intelligent work of its officers and agents.

16. It denies any fraud or misrepresentations on its part, and denies any fraudulent misrepresentation to plaintiff. It avers that by the terms of his certificate of insurance, a copy of which has been hereto attached and marked Exhibit "A", the plaintiff has the following privilege of changing to other forms of certificate: "At any time before default in payment of dues the assured may, by filing a written request, exchange this certificate for a certificate upon any plan of protection then issued by the Society for the same face amount as this certificate." It avers that this defendant society issues ordinary life, 20 payment life and forms of endowment certificate, but it avers that the plaintiff has never made any request to exchange his certificate for a certificate upon any other plan. It avers in fact that the plaintiff has never registered any complaint with the defendant society, and that the first evidence of any dissatisfaction on the plaintiff's part furnished to the defendant society was the serving of the summons and complaint in this cause upon the defendant society. This defendant denies that the plaintiff is entitled to either actual or punitive damages, in any sum, or to any relief in this action.

Except as hereinbefore expressly admitted, this defendant denies each and every allegation contained in the complaint.

Now having fully answered, this defendant prays that it may be hence dismissed with its costs in this behalf reasonably expended.

Hill, Hill, Whiting & Rives, Peyton Bibb, Attorneys
for Defendant, Preferred Life Assurance Society.

[fol. 59] *Duly sworn to by J. J. Warren. Jurat omitted in printing.*

EXHIBIT "A" to ANSWER

NUMBER _____

AGE _____

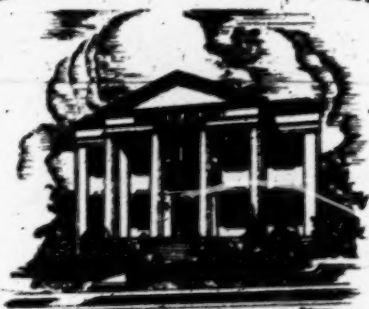
AMOUNT \$1,000.00

CLASS _____

DIVISION _____

Preferred Life Assurance Society

**A
Fraternal**



**Beneficial
Society**

OF MONTGOMERY, ALABAMA
WILL PAY

to _____, the Assured
(herein referred to as the Assured, a beneficial member of this Society)

ONE THOUSAND DOLLARS

(the Face of This Certificate)

Upon the maturity of this Certificate as a Contingent Endowment which shall occur when this Certificate becomes the oldest Certificate in force in the class and division of members of corresponding entry age grouped with the Assured at the time of becoming members and the Society experiences a mortality loss among its other members under a Certificate in force in the same class and division as this Certificate, or upon the maturity of this Certificate as an Old-age Endowment which shall occur on the day the Assured attains the age of seventy years.

For the purpose of Contingent Endowment Fund all certificates which participate therein are grouped in divisions of 25 according to the age of the insured at which the certificate is issued. The certificate holders of each division are numbered from one to twenty-five, inclusive. Number one shall be the certificate holder who has been in his division the longest period of time. Any certificate holder shall cease to be a member upon non-payment of dues, or if his certificate should otherwise terminate according to its terms.

This certificate shall participate in the Contingent Endowment Fund Distribution when and only if it shall be the oldest living member in said division, as herein provided; and provided further that this certificate is in full force and effect by the payment of dues as therein provided at the time of such death.

This certificate will automatically advance in said division on the maturity of any certificate by death or the payment of a mortuary endowment, or any lapsation of any older certificate in said division.

OR

to the Assured's _____, the Beneficiary

ONE THOUSAND DOLLARS

(the Face of This Certificate)

Upon the maturity of this Certificate as a Contingent Endowment which shall occur when this Certificate becomes the oldest Certificate in force in the class and division of members of corresponding entry age grouped with the Assured at the time of becoming members and the Society experiences a mortality loss among its other members under a Certificate in force in the same class and division as this Certificate, or upon the maturity of this Certificate as an Old-age Endowment which shall occur on the day the Assured attains the age of seventy years.

For the purpose of Contingent Endowment Fund all certificates which participate therein are grouped in divisions of 25 according to the age of the insured at which the certificate is issued. The certificate holders of each division are numbered from one to twenty-five, inclusive. Number one shall be the certificate holder who has been in his division the longest period of time. Any certificate holder shall cease to be a member upon non-payment of dues, or if his certificate should otherwise terminate according to its terms.

This certificate shall participate in the Contingent Endowment Fund Distribution when and only if it shall be the oldest living member in said division, as herein provided; and provided further that this certificate is in full force and effect by the payment of dues as therein provided at the time of such death.

This certificate will automatically advance in said division on the maturity of any certificate by death or the payment of a mortuary endowment, or any lapsation of any older certificate in said division.

OR

to the Assured's _____, the Beneficiary

ONE THOUSAND DOLLARS

(the Face of This Certificate)

upon receipt of due proof of the death of the Assured before the maturity of any Endowment hereunder.

This Certificate is issued in consideration of the application of the Assured and of the payment of first

_____ dues of \$ _____, receipt of which is hereby acknowledged maintaining this Certificate for the period terminating on the last day of _____, 19_____, and of the payment hereafter in advance of like required dues during the life of the Assured until the maturity of this Certificate.

This Certificate takes effect as of the date of issue but the certificate

year begins with the month of _____ and ends

with the month of _____

The benefits, conditions and provisions printed or written by the Society on the succeeding pages are a part of this Certificate.

IN WITNESS WHEREOF, The Preferred Life Assurance Society

has caused this Certificate to be executed this _____ day of

_____, Nineteen Hundred and _____

Samuel Lee Secretary *G. J. Cox* President

The full legal reserve necessary to provide the benefits and privileges named in this certificate is maintained and invested in accordance with the laws of the State of Alabama.

Examined _____

MISCELLANEOUS PROVISIONS

1. **Misstatement of Age**—If the age of the Assured has been misstated, the amount payable hereunder shall be such as the dues paid would have purchased at the correct age.

2. **Assignment**—This Certificate cannot be assigned or pledged, nor can the benefits payable hereunder be attached for the payment of any debts of the Assured.

3. **Payment of Benefits**—All sums payable by the Society under this Certificate shall be payable at the Home Office of the Society in the City of Montgomery, Alabama. Death claims, Endowments and Old-Age Endowments will be payable under the terms hereof upon the surrender of this Certificate to the Society for cancellation. Should the Assured become entitled to any Endowment under this Certificate and die after the vesting of said Endowment but prior to its payment, then and in that event the Society shall pay the same to the Executors or Administrators of the Assured.

4. **Cancellation by Payment**—This Certificate will mature in one of three ways—as a Contingent Endowment, or as an Old-Age Endowment, or as a Death Benefit—and the payment of any one of these three benefits automatically cancels this Certificate and discharges the Society from all further liability hereon, and such payment is understood to be in full settlement and complete satisfaction of all obligations herein assumed by the Society.

5. **Deduction of Dues to Complete Certificate Year**—The protection under this Certificate is based upon annual dues payable in advance, but for the convenience of the Assured payments may be made in advance in semi-annual, quarterly or monthly installments at such rates therefor as are now in use by the Society. Any unpaid installment or installments of dues necessary to complete payment of dues for the current Certificate year in which death occurs or in which this Certificate matures as a Contingent Endowment shall be deducted from the amount payable hereunder.

6. **Indebtedness**—Any indebtedness to the Society against this Certificate shall be deducted in any settlement hereunder.

7. **Suicide**—If the Assured shall within two years from the date of issue of this Certificate die by his own act, whether sane or insane, the amount payable under this Certificate shall be a sum equal to the dues thereon which have been paid to and received by the Society and no more.

8. **Proof of Death**—Due proof of the death of the Assured must be furnished to the Society at its Home Office within one year from the date of death.

9. **Limitation of Action**—No legal proceedings for recovery upon this Certificate shall be brought within ninety days from the filing with the Society at its Home Office of due proof of any claim arising hereunder; and no action at law or equity shall be brought or maintained on this Certificate unless it be brought within one year from the date of death if brought to recover death benefits and within one year from the time the right of action accrues in all other cases.

10. **Approval of Claim Filed**—If a claim is filed hereunder by the Assured for any benefit accruing to the Assured and such claim is approved by the Society, then and thereupon this Certificate shall mature as such benefit and its subsequent payment shall cancel this Certificate as of the date of such approval. Should the Assured die subsequent to the approval and prior to the payment of such claim, the nature of such approved claim will not be changed to that of a death claim and no liability shall be incurred by the Society on account of the Assured's death but the payment of the claim as originally filed and approved shall discharge the Society of all liability hereunder.

11. **Right to Examine Body and Make Autopsy**—When any claim is filed hereunder involving the death of the Assured, the Society shall have the right and opportunity to examine the body and to make any autopsy unless prohibited by law.

12. **Military or Naval Service**—Military or Naval Service in time of war is a risk not assumed under this Certificate unless a written permit therefor at a rate of extra dues to be fixed by the Society shall be granted, and if the Assured without such permit, signed by an Executive Officer of the Society, shall enter or be engaged in any military or naval service in time of war and dies while engaged in or as a result of such service, the liability of the Society under this Certificate is limited to the amount of the legal reserve to the credit of this Certificate. Within one year after the termination of war, the Society will return such portion of the extra dues received as in its judgment will not be required to cover the extra hazard. Should any other member of this Society holding an Endowment Certificate in the same class and division as this Certificate die while engaged in or as a result of military or naval service in time of war, then such death—regardless of the issuance of permit or the payment of extra dues, as above provided—shall not form, constitute or be construed as the mortality experience of the Society effecting the maturity of an Endowment.

8. **Proof of Death**—Due proof of the death of the Assured must be furnished to the Society at its Home Office within one year from the date of death.

9. **Limitation of Action**—No legal proceedings for recovery upon this Certificate shall be brought within ninety days from the filing with the Society at its Home Office of due proof of any claim arising hereunder; and no action at law or equity shall be brought or maintained on this Certificate unless it be brought within one year from the date of death if brought to recover death benefits and within one year from the time the right of action accrues in all other cases.

10. **Approval of Claim Filed**—If a claim is filed hereunder by the Assured for any benefit accruing to the Assured and such claim is approved by the Society, then and thereupon this Certificate shall mature as such benefit and its subsequent payment shall cancel this Certificate as of the date of such approval. Should the Assured die subsequent to the approval and prior to the payment of such claim, the nature of such approved claim will not be changed to that of a death claim and no liability shall be incurred by the Society on account of the Assured's death but the payment of the claim as originally filed and approved shall discharge the Society of all liability hereunder.

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13. **Statements**—All statements made by the Assured in the written application for membership and the medical examination, both of which constitute a part of this contract, shall be deemed to be warranties, upon the faith of which this Certificate is issued.

14. **Modifications**—No person except the President or the Secretary of the Society has power on behalf of the Society to change, modify or waive the provisions of this Certificate or to extend the time for paying dues or, in the event of lapse, to reinstate this Certificate, and evidence of any such action hereon must be in writing. The Society shall not be bound by any promise or representation heretofore or hereafter made by or to any Organizer, Cashier or other person other than as specified above.

15. **The Contract**—This Certificate is issued to and accepted by the Assured subject to the Constitution and Laws of this Society now in force and effect or which hereafter may be enacted, adopted or promulgated, and it is understood and agreed that the Constitution and Laws of this Society, the application for membership, the medical examination and all Amendments to each thereof, which are hereby referred to, are all made a part of this Certificate the same as though set out in full.

Assured

AUTOMATIC PAID-UP VALUES

After dues for three full years shall have been paid hereon, if default occur in the payment of any subsequent dues, then this certificate shall become automatically paid-up, without any action on the part of the assured, for such sum, payable at the death of the assured, as the reserve on this certificate, less a surrender charge not to exceed two and one-half percent of the amount of insurance hereunder, will purchase as a net single premium at the attained age of the assured at date of such default, provided there is no indebtedness against this certificate, but without the right of maturity as a Contingent Endowment. If the amount available for the purchase of paid-up life insurance is more than sufficient to purchase a sum greater than the face of this certificate, then such excess shall be converted into a pure endowment payable in cash to the assured at attained age seventy, if then living.

If there be any indebtedness against this certificate, such indebtedness will reduce the amount of paid-up life insurance, and the amount of cash, if any, payable at age seventy, in such proportion as the indebtedness bears to the amount available for the purchase of paid-up insurance.

The reserve on this certificate shall be computed according to the American Experience Table of Mortality with interest at $3\frac{1}{8}\%$ per annum, First Year Preliminary Term.

TABLE OF AUTOMATIC PAID-UP INSURANCE VALUES AND CASH, IF ANY, AT AGE 70, PROVIDED THERE IS NO INDEBTEDNESS AGAINST THE CERTIFICATE

ACROSS THE CERTIFICATE								
End of Year	Age 16	Age 17	Age 18	Age 19	Age 20	Age 21	Age 22	End of Year
	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	
3	\$83	\$85	\$85	\$86	\$86	\$87	\$87	3
4	126	127	127	128	129	129	130	4
5	158	159	160	160	162	165	167	5
6	202	205	208	210	213	215	218	6
7	253	255	258	261	264	266	269	7
8	306	306	309	312	315	317	320	8
9	355	357	360	363	366	369	372	9
10	406	409	412	415	417	420	423	10
11	458	461	464	466	469	472	475	11
12	510	513	516	518	521	524	526	12
13	562	565	568	570	573	576	578	13
14	615	618	620	623	625	628	630	14
15	668	670	673	675	679	680	682	15
16	721	723	726	728	732	734	736	16
17	774	777	779	781	785	788	790	17
18	828	830	832	833	836	837	839	18
19	914	915	916	917	918	919	920	19
20	1000	1000	1000	1000	1000	1000	1000	20

End of Year	Age 23	Age 24	Age 25	Age 26	Age 27	Age 28	Age 29	End of Year
	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	
3	\$88	\$89	\$89	\$89	\$90	\$90	\$92	3
4	131	131	132	133	133	134	134	4
5	170	172	173	177	179	182	184	5
6	221	223	226	228	231	233	236	6
7	272	274	277	280	282	285	287	7
8	323	326	326	331	334	336	339	8
9	374	377	380	383	395	398	399	9
10	426	429	431	434	437	439	442	10
11	477	480	483	486	488	491	493	11
12	529	532	536	539	547	549	552	12
13	581	583	586	588	591	593	595	13
14	633	635	637	640	642	644	648	14
15	685	687	689	691	693	695	697	15
16	736	738	740	742	744	746	748	16
17	788	790	792	794	796	797	799	17
18	840	842	844	845	847	848	850	18
19	920	921	922	923	924	924	925	19
20	1000	1000	1000	1000	1000	1000	1000	20

End of Year	Age 30	Age 31	Age 32	Age 33	Age 34	Age 35	Age 36	End of Year
	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	
3	\$91	\$92	\$92	\$93	\$93	\$94	\$94	3
4	135	137	139	141	144	146	148	4
5	187	189	191	194	196	198	200	5
6	238	241	243	246	248	250	252	6
7	290	292	295	297	300	302	304	7
8	342	344	346	348	351	354	356	8
9	393	395	398	400	403	406	407	9
10	444	447	449	451	454	456	458	10
11	495	498	500	502	505	507	509	11
12	547	549	551	553	555	557	559	12
13	598	600	602	604	606	608	609	13
14	648	650	652	654	656	658	659	14
15	699	701	703	704	706	708	709	15
16	750	751	753	755	756	757	758	16
17	800	802	803	806	806	807	808	17
18	851	852	854	855	856	857	858	18
19	926	926	927	928	928	929	929	19
20	1000	1000	1000	1000	1000	1000	1000	20

End of Year	Age 16	Age 17	Age 18	Age 19	Age 20	Age 21	Age 22	End of Year
	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	
3	\$83	\$85	\$85	\$86	\$86	\$87	\$87	3
4	126	127	127	128	129	129	130	4
5	158	159	160	160	162	165	167	5
6	202	203	208	210	213	215	218	6
7	253	255	258	261	264	264	269	7
8	303	306	309	312	315	317	320	8
9	355	357	360	363	366	369	372	9
10	406	409	412	415	417	420	423	10
11	458	461	464	466	469	472	475	11
12	510	513	516	518	521	524	526	12
13	562	565	568	570	573	576	578	13
14	615	618	620	623	625	628	630	14
15	668	670	673	675	678	680	682	15
16	721	723	726	728	730	732	734	16
17	774	777	779	781	783	785	786	17
18	828	830	832	833	836	837	839	18
19	914	915	916	917	918	919	920	19
20	1000	1000	1000	1000	1000	1000	1000	20

End of Year	Age 23	Age 24	Age 25	Age 26	Age 27	Age 28	Age 29	End of Year
	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	
3	\$88	\$88	\$89	\$89	\$90	\$90	\$91	3
4	131	131	132	133	133	134	134	4
5	170	172	175	177	179	182	184	5
6	221	223	226	228	231	233	236	6
7	272	274	277	280	282	285	287	7
8	323	326	328	331	334	336	339	8
9	374	377	380	383	385	388	390	9
10	426	429	431	434	437	439	442	10
11	477	480	483	486	488	491	493	11
12	529	532	534	537	539	542	544	12
13	581	583	586	588	591	593	595	13
14	633	635	637	640	642	644	646	14
15	685	687	689	691	693	695	697	15
16	736	738	740	742	744	746	748	16
17	788	790	792	794	796	797	799	17
18	840	842	844	846	847	848	850	18
19	920	921	922	923	924	924	925	19
20	1000	1000	1000	1000	1000	1000	1000	20

End of Year	Age 30	Age 31	Age 32	Age 33	Age 34	Age 35	Age 36	End of Year
	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	
3	\$91	\$92	\$92	\$93	\$93	\$94	\$94	3
4	135	137	139	141	144	146	148	4
5	187	189	191	194	196	199	200	5
6	239	241	243	246	248	250	253	6
7	290	292	295	297	300	302	304	7
8	342	344	346	349	351	354	356	8
9	393	395	398	400	403	406	408	9
10	444	447	449	451	454	456	458	10
11	495	498	500	502	505	507	509	11
12	547	549	551	553	555	557	559	12
13	598	600	602	604	606	608	609	13
14	648	650	652	654	656	658	659	14
15	699	701	703	704	706	708	709	15
16	750	751	753	755	756	757	758	16
17	800	802	803	805	806	807	808	17
18	851	852	854	855	856	857	858	18
19	926	926	927	928	928	929	929	19
20	1000	1000	1000	1000	1000	1000	1000	20

End of Year	Age 37	Age 38	Age 39	Age 40	Age 41	Age 42	Age 43	End of Year
	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	Paid Up Ins.	
3	\$95	\$95	\$96	\$96	\$97	\$97	\$98	3
4	140	142	144	145	146	147	148	4
5	202	205	207	208	209	210	211	5
6	255	257	259	261	263	265	267	6
7	307	309	311	313	315	317	319	7
8	358	360	362	364	366	368	370	8
9	409	411	413	415	417	419	420	9
10	460	462	464	466	467	469	470	10
11	511	513	514	516	517	518	519	11
12	561	563	564	566	567	568	569	12
13	611	612	614	615	616	617	617	13
14	661	662	663	665	666	667	668	14
15	710	711	712	713	714	714	715	15
16	760	761	762	763	764	765	765	16
17	809	810	811	812	812	813	813	17
18	858	859	860	861	861	862	862	18
19	929	930	930	930	930	930	930	19
20	1000	1000	1000	1000	1000	1000	1000	20

(SEE REVERSE SIDE FOR AGES 44-55)

End of Year	Age 44		Age 45		Age 46		Age 47		Age 48		Age 49		Age 50		End of Year
	Paid Up Ins.	Cash at Age 70	Paid Up Ins.	Cash at Age 70	Paid Up Ins.	Cash at Age 70	Paid Up Ins.	Cash at Age 70	Paid Up Ins.	Cash at Age 70	Paid Up Ins.	Cash at Age 70	Paid Up Ins.	Cash at Age 70	
3	\$100		\$102		\$107		\$112		\$116		\$118		\$123		3
4	159		160		160		166		171		178		186		4
5	212		212		216		224		232		243		253		5
6	269		270		272		282		293		304		317		6
7	320		322		328		340		352		365		378		7
8	371		372		384		396		410		424		441		8
9	421		422		435		450		464		485		505		9
10	471		472		488		502		523		544		568		10
11	520		521		537		558		578		603		629		11
12	569		570		589		611		635		661		691		12
13	618		618		640		664		690		720		753		13
14	666		666		691		717		747		779		816		14
15	714		714		742		771		803		839		883		15
16	763		763		793		824		860		902		956		16
17	812		812		844		879		919		973		1000	\$30	17
18	862		861		902		941		993		1000	\$45.	1000	108	18
19	930		930		960		1000	\$10	1000	\$61	1000	119	1000	180	19
20	1000		1000	\$24	1000		1000	74	1000	128	1000	187	1000	253	20

End of Year	Age 51		Age 52		Age 53		Age 54		Age 55		End of Year
	Paid Up Ins.	Cash at Age 70	Paid Up Ins.	Cash at Age 70	Paid Up Ins.	Cash at Age 70	Paid Up Ins.	Cash at Age 70	Paid Up Ins.	Cash at Age 70	
3	\$128		\$135		\$140		\$145		\$154		3
4	195		204		213		226		239		4
5	263		274		289		304		324		5
6	329		345		363		384		408		6
7	396		414		436		463		491		7
8	463		484		511		540		576		8
9	528		554		585		619		661		9
10	593		623		658		700		749		10
11	659		693		734		783		847		11
12	724		765		812		875		945		12
13	791		838		899		966		1000	\$52	13
14	861		920		985		1000	\$63	1000	147	14
15	939		1000	\$4	1000	\$75	1000	154	1000	253	15
16	1000	\$17	1000	85	1000	159	1000	253			16
17	1000	95	1000	164	1000	253					17
18	1000	174	1000	253							18
19	1000	253									19
20											20

BENEFITS, CONDITIONS AND PROVISIONS

1. **Privilege of Changing to Other Forms of Certificates**—(A) At any time before default on payment of dues the Assured may, by filing a written request change this certificate for a certificate upon any plan of protection then issued by the Society for the same face amount as this certificate.

(B) Issuance of the new certificate automatically cancels this certificate. No credit will be allowed for any difference in dues for the actual period of protection already had under this certificate, as such dues are earned but any excess or unearned dues on this certificate will be credited against future dues on the new certificate.

This certificate will automatically advance in said division on the maturity of any certificate by death of the payment of a Mortuary Endowment, or any lapse of any older certificate in said division.

2. **Emergency Draft**—In the event of the death of the Assured during the continuance of this Certificate in force, the Beneficiary may immediately, before furnishing notice or proof of death, secure the sum of One Hundred Dollars as an advance payment on the proceeds payable hereunder by utilizing the "Emergency Draft" appearing on the bottom of this Certificate provided the amount payable hereunder exceeds said sum, and provided further that said draft is properly executed and is drawn and deposited subject to all of the conditions and provisions mentioned therein. Should the deceased be the holder of more than one Certificate in force in this Society, then and in that event only one such advance will be allowed and only one emergency draft will be honored.

3. **Grace and Privilege in Payment of Dues**—The Assured has the privilege of paying the dues hereunder monthly, quarterly, semi-annually or annually in advance at the rates therefor now in use by the Society. If the Assured elects to pay dues monthly, such payments shall be due on the first day of each calendar month and must be paid on or before the last day of each calendar month. If the Assured elects to pay dues quarterly, semi-annually or annually, such payments shall be due on the first day of the first calendar month of the quarterly, semi-annual or annual period and must be paid on or before the last day of the first calendar month of the quarterly, semi-annual or annual period. Failure to make payment of dues on or before the last day of the month when due shall lapse this Certificate. All dues shall be paid at the Home Office of the Society or to its authorized Cashier in exchange for an official receipt signed by the Cashier.

4. **Change of Beneficiary**—The Assured may at any time, and from time to time, change the Beneficiary. Every change of Beneficiary must be made by written notice to the Society at its Home Office on special forms furnished for this purpose accompanied by this Certificate for indorsement of the change thereon by an Executive Officer of the Society and unless so indorsed the change shall not take effect. After such indorsement the change shall relate back to and take effect as of the date the Assured signed said written notice of change whether the Assured be living at the time of such indorsement or not, but without prejudice to the Society on account of any payment made by it before such indorsement. All such indorsements will be made on the "Register of Change of Beneficiary" appearing herein. If there be more than one Beneficiary, the interest of any deceased Beneficiary shall pass to the surviving Beneficiary or Beneficiaries unless otherwise directed by the Assured and indorsed by the Society on this Certificate.

5. **Reinstatement**—At any time within three months after any default in payment of dues, reckoned from the due date thereof, upon written application by the Assured and upon presentation to the Society, at its Home Office of evidence of the good health of the Assured satisfactory to the Society, this Certificate may be reinstated together with any indebtedness, all arrears of dues and current dues. Pending the reinstatement of this Certificate, all monies tendered the Society in payment of dues after the lapse of this Certificate, will be received by the Society as a deposit only and not as a payment of dues and will be held by the Society in trust for the Assured and, if reinstatement is not effected, will be returned to the Assured.

6. **Incontestability**—This Certificate shall be incontestable after two years from its date of issue except for non-payment of required dues or for violation of the terms of the Certificate relating to military or naval service in time of war, and except as to provisions relating to disability, double or triple indemnity benefits, if any.

7. **Residence, Travel and Occupation**—This Certificate is free of conditions as to residence, travel or occupation except as herein provided under disability, double or triple indemnity benefits, if any, and except as to military or naval service in time of war.

8. **Rights of the Assured**—The Assured may, without the consent of the Beneficiary, receive every benefit, exercise every right and enjoy every privilege conferred upon him by this Certificate.

8. **Rights of the Assured**—The Assured may, without the consent of the Beneficiary, receive every benefit, exercise every right and enjoy every privilege conferred upon him by this Certificate.

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Register of Change of Beneficiary

NOTE—No change of Beneficiary shall take effect unless indorsed on this Certificate by an Executive Officer of the Society at the Home Office

DATE OF REQUEST	BENEFICIARY	INDORSED BY

INDORSEMENTS

PREFERRED
ENDOWMENT CERTIFICATE
ISSUED BY THE

Preferred Life Assurance Society

OF
MONTGOMERY, ALA

TO

Number

Amount

\$1,000.00

Position at Date of Issue

Annually

Semi-Annually

Quarterly

Monthly

TO COLLECTOR'S CLAIM

Should a claim arise hereunder, the Assured or Beneficiary should write direct to the Society at Montgomery, Alabama, and thereby save time and expense in the assistance of any third person is not necessary for the collection of any proper claim under this Certificate.

NOTICE—All communications regarding this certificate or any of its benefits should be addressed to the Executive Office of this Society, Preferred Life Building, Montgomery, Ala.

All dues must be sent to the Preferred Life Assurance Society, Preferred Life Building, Montgomery, Alabama.

See背面 for details

EXHIBIT 'B' to ANSWER

NUMBER _____

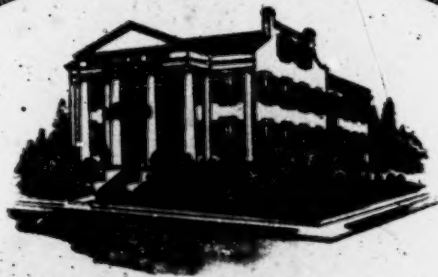
AGE _____

AMOUNT \$1,000.00

CLASS _____

DIVISION _____

PREFERRED LIFE ASSURANCE SOCIETY



BENEFIT SOCIETY
OF MONTGOMERY, ALABAMA
WILL PAY

TO _____

THE ASSURED

(herein referred to as the Assured, a beneficial member of this Society)

One Thousand Dollars

(THE FACE OF THIS CERTIFICATE)

Upon the maturity of this Certificate as a Contingent Endowment which shall occur when this Certificate becomes the oldest Certificate in force in the class and division of members of corresponding entry age grouped with the Assured at the time of becoming members and the Society experiences a mortality loss among its other members under a Certificate in force in the same class and division as this Certificate, or upon the maturity of this Certificate as an Old-Age Endowment which shall occur on the day the Assured attains the age of seventy years.

For the purpose of Contingent Endowment Fund distribution all certificates which participate therein are grouped in classes according to the age as shown at the time the certificate is issued, and in each class there are 25 divisions or more, as authorized and limited by Act of Alabama Legislature, approved July 30th, 1931, and each division may contain no more than 25 members. The certificate holders of each division are numbered from 1 to 25 inclusive. Member One shall be the certificate holder who has been in his division the longest period of time. Any certificate holder shall cease to be a member upon non-payment of dues, or if his certificate should otherwise terminate according to its terms. The division of a new member will be determined by the number of members in each division of the class at the time of admission, and each new member will be assigned a position in a separate division of his class for each certificate issued such member. Each applicant's certificate will be placed in the division of his class containing the fewest number of members.

The holder of this certificate shall participate in the Contingent Endowment Fund distribution when and only if another member in his division shall die and he is the oldest member in his division; and provided further that this certificate is in full force and effect by payment of dues as therein provided at the time of such death, and that such death was not the result of suicide as provided in Paragraph 7, "SUICIDE," nor the result of engaging in military or naval service as provided in paragraph 12, "MILITARY OR NAVAL SERVICE," under Miscellaneous Provisions.

The holder of this certificate will automatically advance in his division on the maturity of any certificate by death or the payment of a mortuary endowment, or any lapse of any older certificate in the same division. OR

to the Assured's _____

the Beneficiary _____

One Thousand Dollars

(THE FACE OF THIS CERTIFICATE)

Upon the maturity of this Certificate as a Contingent Endowment which shall occur when this Certificate becomes the oldest Certificate in force in the class and division of members of corresponding entry age grouped with the Assured at the time of becoming members and the Society experiences a mortality loss among its other members under a Certificate in force in the same class and division as this Certificate, or upon the maturity of this Certificate as an Old-Age Endowment which shall occur on the day the Assured attains the age of seventy years.

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The holder of this certificate shall participate in the Contingent Endowment Fund distribution when and only if another member in his division shall die and he is the oldest member in his division, and provided further that this certificate is in full force and effect by payment of dues as therein provided at the time of such death, and that such death was not the result of suicide as provided in Paragraph 7, "SUICIDE," nor the result of engaging in military or naval service as provided in paragraph 12, "MILITARY OR NAVAL SERVICE," under Miscellaneous Provisions.

The holder of this certificate will automatically advance in his division on the maturity of any certificate by death or the payment of a mortuary endowment, or any lapsation of any older certificate in the same division. OR

to the Assured's _____ the Beneficiary

One Thousand Dollars

(THE FACE OF THIS CERTIFICATE)

upon receipt of due proof of the death of the Assured before the maturity of any Endowment hereunder.

This Certificate is issued in consideration of the application of the Assured and of the payment of first _____ dues of \$ _____ receipt of which is hereby acknowledged maintaining this Certificate for the period terminating on the last day of _____ 19 _____ and of the payment hereafter in advance of like required dues during the life of the Insured until the maturity of this Certificate.

This Certificate takes effect as of the date of issue but the certificate year begins with the month of _____ and ends with the month of _____

The benefits, conditions and provisions printed or written by the Society on the succeeding pages are a part of this Certificate.

IN WITNESS WHEREOF, The Preferred Life Assurance Society has caused this Certificate to be executed this _____ day of _____, Nineteen Hundred and _____


Wm. Longshore SECRETARY *SAMUEL COPELAND* PRESIDENT

Examined _____

The full legal reserve necessary to provide the benefits and privileges named in this Certificate is maintained and invested in accordance with the laws of the State of Alabama.

MISCELLANEOUS PROVISIONS

1. **MISSTATEMENT OF AGE**—If the age of the Assured has been misstated, the amount payable hereunder shall be such as the dues paid would have purchased at the correct age.

2. **ASSIGNMENT**—This Certificate cannot be assigned or pledged, nor can the benefits payable hereunder be attached for the payment of any debts of the Assured.

3. **PAYMENT OF BENEFITS**—All sums payable by the Society under this Certificate shall be payable at the Home Office of the Society in the City of Montgomery, Alabama. Death claims, Endowments and Old-Age Endowments will be payable under the terms hereof upon the surrender of this Certificate to the Society for cancellation. Should the Assured become entitled to any Endowment under this Certificate and die after the vesting of said Endowment but prior to its payment, then and in that event the Society shall pay the same to the Executors or Administrators of the Assured.

4. **CANCELLATION BY PAYMENT**—This Certificate will mature in one of three ways—as a Contingent Endowment, or as an Old-Age Endowment, or as a Death Benefit—and the payment of any one of these three benefits automatically cancels this Certificate and discharges the Society from all further liability hereon, and such payment is understood to be in full settlement and complete satisfaction of all obligations herein assumed by the Society.

5. **DEDUCTION OF DUES TO COMPLETE CERTIFICATE YEAR**—The protection under this Certificate is based upon annual dues payable in advance, but for the convenience of the Assured payments may be made in advance in semi-annual, quarterly or monthly installments at such rates therefor as are now in use by the Society. Any unpaid installment or installments of dues necessary to complete payment of dues for the current Certificate year in which death occurs or in which this Certificate matures as a Contingent Endowment shall be deducted from the amount payable hereunder.

6. **INDEBTEDNESS**—Any indebtedness to the Society against this Certificate shall be deducted in any settlement hereunder.

7. **SUICIDE**—If the Assured shall within two years from the date of issue of this Certificate die by his own act, whether sane or insane, the amount payable under this Certificate shall be a sum equal to the dues thereon which have been paid to and received by the Society and no more.

8. **PROOF OF DEATH**—Due proof of the death of the Insured must be furnished to the Society at its Home Office within one year from the date of death.

9. **LIMITATION OF ACTION**—No legal proceedings for recovery upon this Certificate shall be brought within ninety days from the filing with the Society at its Home Office of due proof of any claim arising hereunder, and no action at law or equity shall be brought or maintained on this Certificate unless it be brought within one year from the date of death if brought to recover death benefits and within one year from the time the right of action accrues in all other cases.

10. **APPROVAL OF CLAIM FILED**—If a claim is filed hereunder by the Assured for any benefit accruing to the Assured and such claim is approved by the Society, then and thereupon this Certificate shall mature as such benefit and its subsequent payment shall cancel this Certificate as of the date of such approval. Should the Assured die subsequent to the approval and prior to the payment of such claim, the nature of such approved claim will not be changed to that of a death claim and no liability shall be incurred by the Society on account of the Assured's death but the payment of the claim as originally filed and approved shall discharge the Society of all liability hereunder.

11. **RIGHT TO EXAMINE BODY AND MAKE AUTOPSY**—When any claim is filed hereunder involving the death of the Assured, the Society shall have the right and opportunity to examine the body and to make any autopsy unless prohibited by law.

12. **MILITARY OR NAVAL SERVICE**—Military or Naval Service in time of war is a risk not assumed under this Certificate unless a written permit therefor at a rate of extra dues to be fixed by the Society shall be granted, and if the Assured without such permit, signed by an Executive Officer of the Society, shall enter or be engaged in any military or naval service in time of war and dies while engaged in or as a result of such service, the liability of the Society under this Certificate is limited to the amount of the legal reserve to the credit of this Certificate. Within one year after the termination of war, the Society will return such portion of the extra dues received as in its judgment will not be required to cover the extra hazard. Should any other member of this Society holding an Endowment Certificate in the same class and division as this Certificate die while engaged in or as a result of military or naval service in time of war, then such death—regardless of the issuance of permit or the payment of extra dues as above provided—shall not form, constitute or be construed as the mortality experience of the Society effecting the maturity of an Endowment.

7. **SUICIDE**—If the Assured shall within two years from the date of issue of this Certificate die by his own act, whether sane or insane, the amount payable under this Certificate shall be a sum equal to the dues thereon which have been paid to and received by the Society and no more.

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13. **STATEMENTS**—All statements made by the Assured in the written application for membership and the medical examination, both of which constitute a part of this contract, shall be deemed to be warranties, upon the faith of which this Certificate is issued.

14. **MODIFICATIONS**—No person except the President or the Secretary of the Society has power on behalf of the Society to change, modify or waive the provisions of this Certificate or to extend the time for paying dues or, in the event of lapse, to reinstate this Certificate, and evidence of any such action hereon must be in writing. The Society shall not be bound by any promise or representation heretofore or hereafter made by or to any Organizer, Cashier or other person other than as specified above.

15. **THE CONTRACT**—This Certificate is issued to and accepted by the Assured subject to the Constitution and Laws of this Society now in force and effect or which hereafter may be enacted, adopted or promulgated, and it is understood and agreed that the Constitution and Laws of this Society, the application for membership, the medical examination and all Amendments to each thereof, which are hereby referred to, are all made a part of this Certificate the same as though set out in full.

BENEFITS, CONDITIONS AND PROVISIONS

1. **PRIVILEGE OF CHANGING TO OTHER FORMS OF CERTIFICATES**—(A) At any time before default in payment of dues the Assured may, by filing a written request exchange this Certificate for a certificate upon any plan of protection then issued by the Society for the same face amount as this Certificate.

(B) Issuance of the new certificate automatically cancels this Certificate. No credit will be allowed for any difference in dues for the actual period of protection already had under this Certificate, as such dues are earned but any excess or unearned dues on this Certificate will be credited against future dues on the new certificate.

This Certificate will automatically advance in said division on the maturity of any certificate by death or the payment of a Mortuary Endowment, or any lapse of any older certificate in said division.

2. **EMERGENCY DRAFT**—In the event of the death of the Assured during the continuance of this Certificate, the Beneficiary may immediately, before furnishing notice or proof of death, secure the sum of One Hundred Dollars as an advance payment on the proceeds payable hereunder by utilizing the "Emergency Draft" appearing on the bottom of this Certificate provided the amount payable hereunder exceeds said sum, and provided further that said draft is properly executed and is drawn and deposited subject to all of the conditions and provisions mentioned therein. Should the deceased be the holder of more than one Certificate in force in this Society, then and in that event only one such advance will be allowed and only one emergency draft will be honored.

3. **GRACE AND PRIVILEGE IN PAYMENT OF DUES**—The Assured has the privilege of paying the dues hereunder monthly, quarterly, semi-annually or annually in advance at the rates therefor now in use by the Society. If the Insured elects to pay dues monthly, such payments shall be due on the first day of each calendar month and must be paid on or before the last day of each calendar month. If the Insured elects to pay dues quarterly, semi-annually or annually, such payments shall be due on the first day of the first calendar month of the quarterly, semi-annual or annual period and must be paid on or before the last day of the first calendar month of the quarterly, semi-annual or annual period. Failure to make payment of dues on or before the last day of the month when due shall lapse this Certificate. All dues shall be paid at the Home Office of the Society or to its authorized Cashier in exchange for an official receipt signed by the Cashier.

4. **CHANGE OF BENEFICIARY**—The Assured may at any time, and from time to time, change the Beneficiary. Every change of Beneficiary must be made by written notice to the Society at its Home Office on special forms furnished for this purpose accompanied by this Certificate for indorsement of the change thereon by an Executive Officer of the Society and unless so indorsed the change shall not take effect. After such indorsement the change shall relate back to and take effect as of the date the Assured signed said written notice of change whether the Assured be living at the time of such indorsement or not, but without prejudice to the Society on account of any payment made by it before such indorsement. All such indorsements will be made on the "Register of Change of Beneficiary" appearing herein. If there be more than one Beneficiary, the interest of any deceased Beneficiary shall pass to the surviving Beneficiary or Beneficiaries unless otherwise directed by the Assured and indorsed by the Society on this Certificate.

5. **REINSTATEMENT**—At any time within three months after any default in payment of dues, reckoned from the due date thereof, this Certificate may be reinstated upon written application by the Assured and upon presentation to the Society, at its Home Office of evidence of the good health of the Assured satisfactory to the Society, together with the payment of any indebtedness, all arrears of dues and current dues. Pending the reinstatement of this Certificate, all monies tendered the Society in payment of dues after the lapse of this Certificate, will be received by the Society as a deposit only and not as a payment of dues and will be held by the Society in trust for the Assured and, if reinstatement is not effected, will be returned to the Assured.

6. **INCONTESTABILITY**—This Certificate shall be incontestable after two years from its date of issue except for non-payment of required dues or for violation of the terms of this Certificate relating to military or naval service in time of war, and except as to provisions relating to disability, double or triple indemnity benefits, if any.

7. **RESIDENCE, TRAVEL AND OCCUPATION**—This Certificate is free of conditions as to residence, travel or occupation except as herein provided under disability, double or triple indemnity benefits, if any, and except as to military or naval service in time of war.

8. **RIGHTS OF THE ASSURED**—The Assured may, without the consent of the Beneficiary, receive every benefit, exercise every right and enjoy every privilege conferred upon him by this Certificate.

4. **CHANGE OF BENEFICIARY**—The Assured may at any time, and from time to time, change the Beneficiary. Every change of Beneficiary must be made by written notice to the Society at its Home Office on special forms furnished for this purpose accompanied by this Certificate for indorsement of the change thereon by an Executive Officer of the Society and unless so indorsed the change shall not take effect. After such indorsement the change shall relate back to and take effect as of the date the Assured signed said written notice of change whether the Assured be living at the time of such indorsement or not, but without prejudice to the Society on account of any payment made by it before such indorsement. All such indorsements will be made on the "Register of Change of Beneficiary" appearing herein. If there be more than one Beneficiary, the interest of any deceased Beneficiary shall pass to the surviving Beneficiary or Beneficiaries unless otherwise directed by the Assured and indorsed by the Society on this Certificate.

5. **REINSTATEMENT**—At any time within three months after any default in payment of dues, reckoned from the due date thereof, this Certificate may be reinstated upon written application by the Assured and upon presentation to the Society, at its Home Office of evidence of the good health of the Assured satisfactory to the Society, together with the payment of any indebtedness, all arrears of dues and current dues. Pending the reinstatement of this Certificate, all monies tendered the Society in payment of dues after the lapse of this Certificate, will be received by the Society as a deposit only and not as a payment of dues and will be held by the Society in trust for the Assured and, if reinstatement is not effected, will be returned to the Assured.

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7. **RESIDENCE, TRAVEL AND OCCUPATION**—This Certificate is free of conditions as to residence, travel or occupation except as herein provided under disability, double or triple indemnity benefits, if any, and except as to military or naval service in time of war.

8. **RIGHTS OF THE ASSURED**—The Assured may, without the consent of the Beneficiary, receive every benefit, exercise every right and enjoy every privilege conferred upon him by this Certificate.

Emergency Draft

Dated at _____ State of _____

This _____ Day of _____, 19____

AT SIGHT PAY TO THE ORDER OF _____

which said Bank, by its indorsement hereon, does hereby certify to and guarantee the Fact of the Death from causes other than Suicide of _____ the Assured under Certificate No. _____ Issued by

PREFERRED LIFE ASSURANCE SOCIETY

One Hundred Dollars (\$100.00)

That the said Certificate shall be in force at the time of the death of the Assured and that the said Assured shall be entitled to the Death Benefit accruing under said Certificate and that the said Assured shall in no way prejudice his rights to receive the same by the execution of this draft. The Drawer signing this draft certifies that he or she is the Assured under said Certificate and that the Assured protected under said Certificate died on the _____ day of _____, 19____, and that the cause of death was _____

The Payee Bank guarantees the signature and the identity of the Beneficiary who signs this draft.

PREFERRED LIFE ASSURANCE SOCIETY
MONTGOMERY, ALABAMA

Beneficiary Sign Here _____

Subject to the conditions printed herein, this Draft will be paid at the Home Office of Preferred Life Assurance Society, in the City of Montgomery, Alabama.

Joseph E. Jackson
President

SAMPLE COPY

REGISTER OF CHANGE OF BENEFICIARY

NOTE—No change of Beneficiary shall take effect unless indorsed on this Certificate by an Executive Officer of the Society at the Home Office

DATE OF REQUEST	BENEFICIARY	INDORSED BY

INDORSEMENTS

PREFERRED

ENDOWMENT CERTIFICATE

ISSUED BY THE

PREFERRED LIFE ASSURANCE SOCIETY

MONTGOMERY, ALA.

COPY TO

NUMBER

AMOUNT

\$1,000.00

POSITION AT DATE OF ISSUE

ANNUALLY

SEMI-ANNUALLY

QUARTERLY

MONTHLY

TO COLLECT A CLAIM

Should a claim arise hereunder, the Assured or Beneficiary should write direct to the Society at Montgomery, Alabama, and thereby save time and expense as the assistance of any third person is not necessary for the collection of any proper claim under this Certificate.

NOTICE.—All communications regarding this certificate or any of its benefits should be addressed to the Executive Office of this Society, Preferred Life Building, Montgomery, Ala.

All dues must be sent to the Preferred Life Assurance Society Preferred Life Building, Montgomery, Alabama, or its authorized Branch Offices.

EXHIBIT 'C' to ANSWER

1777636

APPLICATION TO PREFERRED LIFE ASSURANCE SOCIETY - PART ONE

1. (Print name in full) JAMES LANIER BERNARD
(Given Name) (Middle Name) (Last Name)

Residence	Place of business	Present Occupation	Born at
State <u>S.C.</u>		<u>Pharmacy</u>	<u>Waynes</u>
County <u>RICHLAND</u>		State exact duties in full	<u>S.C.</u>
Town <u>COLUMBIA</u>		Other occupations (if any)	on <u>3</u> day of <u>June</u> 19 <u>11</u>
Street <u>Seavies</u>			Married
No. <u>1603</u> R. F. D.			Not Married
			(Strike out one)
Name and address of firm or employer			Send all communications to
<u>SUMMER STREET PHARMACY</u>			Residence
			Place of business
			(Strike out one)

Application to Preferred Life Assurance Society for membership in Columbia, S.C. Lodge No. 36
Located at Calabria in the State of S.C. and for Beneficial Certificates as follows:

Amount of protection desired \$ <u>1000</u>	Plan of protection desired <u>P.E.</u>	Uses how payable <u>monthly</u> (Annual - Semi-Annual - Quarterly - Monthly)	Age Nearest Birthday <u>23</u>
---	--	---	--------------------------------

2. I designated as Beneficiary to receive the proceeds of Certificate in event of death, and reserve the right to change the Beneficiary from time to time:

Beneficiary (Print Name in Full)	Address	Age of Beneficiary	Relation to Insured
<u>Mrs. Laura Belle Bern.</u>	<u>1603 Seavies</u>	<u>43</u>	<u>Wife</u>

3. The following is all the life insurance and fraternal protection I now have on my life: (If none, say "None")

4. No application for insurance or fraternal protection on my life, and no application for the reinstatement of such insurance or fraternal protection has been declined except as follows: none, say "None"

5 A. When last accepted for Life Insurance

5 B. Give year, and name of Company.

1930
South Eastern

CHECKED

Mrs. Laura Della Betz		1603 Service	H3	Knoultin

6. The following is all the life insurance and fraternal protection I now have on my life: (If none, say "None") South Eastern 10007

7. No application for insurance or fraternal protection on my life, and no application for the reinstatement of such insurance or fraternal protection has been declined except as follows: "None, say "None") na.

8 A. When last accepted for Life Insurance 1930

8 B. Give year and name of Company. South Eastern

9. ADDITIONS OR AMENDMENTS (For Home Office Use Only.)

13-21

I AGREE, REPRESENT AND DECLARE, on behalf of myself and of every person who shall here or claim any interest in any certificate or certificate issued under this application, as follows: I have read each and all of the above answers and they are each within my knowledge and each of them is full, complete and true. I am in good health and free from any and all diseases, ailments, physical impairments or disabilities, except as stated in this application and the medical examination which is to become a part of it. I am not engaged in any profession or occupation other than as stated in this application. All of my statements, representations and answers contained in this application and in the medical examination are made by me to obtain the protection requested herein; they are each made to the best of my knowledge and the Society believing them to be true will receive and act upon them and my entire answer or answers of facts regarding my health, habits, occupation or circumstances shall render any certificate that may be issued to me under this application null and void and all the rights and benefits thereunder to myself or beneficiary shall come and terminate without action. I expressly waive the attaching of copies of this application to any certificate issued hereunder and I expressly waive any and all provisions of all statutory laws and court decisions in relation thereto. Only the President or Secretary of the Society can make, modify or discharge contracts or waive any of the Society's rights or requirements and I agree to be bound by the knowledge of the Organizer, Cashier or the Medical Examiner is not notice of non-compliance with the Society and neither one of them is authorized to accept members or to pass upon the good health of members. A receipt on the form attached as a coupon to this application is the only receipt the Organizer is authorized to give for any payment made at the time this application is given. If this application is for a Preferred Life Endowment Certificate no particular number or position in class or division was promised me by the Organizer who issued this application and I understand that no Organizer can provide any particular number or position in class. I will file completed medical examination within ten days from date of this application. The amount paid by me as membership fee and first dues accompanying this application shall be held in trust by the Society until such time as my application and medical examination are reviewed by the Society at its executive office and passed upon and recorded and if this application is rejected then the Society will refund the membership fee and the first dues. By receiving and signing any Certificate issued under this application, I hereby ratify any additions or amendments which the Society may make and refer to in questions or questions entitled "Additions or Amendments." The protection hereby applied for shall take effect at the time, in the manner and under the conditions specified and set forth in the respective certificate or certificates issued under this application. I will assume all ritualistic obligations of the Society and give a pledge not to reveal them to anyone not entitled to receive them and at the first opportunity I will present myself to the lodge mentioned in this application for initiation into the secret work of the Society. Any certificate issued under this application will be accepted by me subject to the Constitution and Laws of the Society now in force and effect or which hereafter may be enacted, adopted or promulgated. The Charter, Constitution and Laws of this Society, my application for membership, my medical examination, and all amendments to each thereof, all constitute the basis of and form a part of any certificate that may be issued to me hereunder by Preferred Life Assurance Society.

HEREBY DECLARE that I have paid to Organizer 2 Dollars (\$ 4.00) in cash, and that I hold this receipt for the same, made up, without alteration, on the receipt form detached from and corresponding in date with this application, and I assent to the terms of said receipt.

Dated at the City of St. Louis in the State of Mo. this 2 day of Nov. 1932

Witnessed and obligated by Wm. F. ... Applicant's Signature in own proper handwriting

Wm. F. ... Organizer. (Given Name) (Middle Name) (Last Name)

PREFERRED LIFE ASSURANCE SOCIETY, Montgomery, Alabama

DECLARATION OF INSURABILITY

DO NOT USE DASHES OR HYPHENS IN ANY QUESTION UNLESS OTHERWISE

1. Your name: James LAMIER BELL
(First Name) (Middle Name) (Last Name)

2a. What is your race? White
2b. What is your nationality? White
3a. What is your exact height and weight? 5' 8" 165
3b. When were you last weighed? 10/2/29
4. Have you gained or lost weight during the past two years? No
If so, give pounds gained or lost and full details.
5. In giving name of death avoid all indefinite terms.

6. When did you last consult a physician and for what reason? 1932
Name of physician? Chas. OYENS
Address of physician? Calum Li
When? 1/2/29
Duration of illness? 1 week
7. Have you ever undergone a surgical operation? No
If so, give date and details.
Name of physician? Dr. J. J. J. J.
Address of physician? San Jose

FAMILY RECORD	LIVING		DEAD	
	Age	Age at Death	Cause of Death	How Long Sick
FATHER	52			
MOTHER	43			
HUSBAND				
WIFE				
1. Mr. L. J. J.	25			
2. Mr. J. J. J.	24			
3. Mr. J. J. J.	24			
4. Mr. J. J. J.	24			

8. Has change of residence or other reason ever been given or added for the benefit of your health? No
If so, give details?
9. Do you contemplate a change of occupation for any reason? No
If so, give details?
10. Have you any other form of life or other life or bonding of other sort? No
If so, give details?
11. Have you any other life, accident or any physical disability? No
If so, give details?
12. Have you ever had any disease or disorder? No
If so, give details?
13. Are you now receiving or have you ever received any compensation for or pension from government or insurance company or source of physical impairment? No
If so, give details?

14. Has the nature of your health ever being over long, repeated or lasting tuberculosis? If so, give date and details.
15. Have you been associated with a contagious disease during the past three years? If so, give date and details.
16. Do you use alcoholic liquors? No
Give kind, frequency and amount.
17. Have you ever used any smoking pipe or cigarette or tobacco? If so, give full details.
18. Have you ever used cocaine, or opium or any narcotic drug? If so, give full details.
19. How much time have you lost from work during the last two years because of illness or injury?
20. Have you ever taken any medicine?
If so, give date of last dose and number of doses.

21. Have you ever had any disease of the heart, or high blood pressure or shortness of breath?
22. Have you ever had a stroke, or paralysis of limb, or any other symptoms of arteriosclerosis?
23. Have you ever had diabetes or any other disease of the lungs?
24. Have you ever had a cancer, or goiter or enlargement?
25. Have you ever had cholera, or typhoid fever, or diphtheria, or any nervous trouble?
26. Have you ever had any disease of the stomach, or liver, or intestines, or spleen, or testis, or ovary, or prostate, or kidney or bladder?
27. Have cholera, or typhoid, or diphtheria, or any other disease of the gastro-intestinal system?
28. Have you ever had a cancer, or tumor or disease of any kind?

29. In regard to these answers "Yes" in question 14, give full particulars below:

Injury or Injury	Date	No. of Attacks	Duration	Results	Name and Address of Attending Physician

30. Have you ever consulted any physician not mentioned in the above answers? Give name and address of physician, ailments or disease and date.

I, the undersigned, and of each person who shall have or claim any interest in the above answers, hereby declare that I have carefully read and believe them to be true and correct and not upon them and if satisfactory to the Society, shall be considered as Part Two (and in lieu of medical examination) of my application for life insurance.

I, especially declare, as behalf of myself and of any person who shall have or claim any interest in the policy named hereunder, all provisions of law relating to any physician or other person who has been or is to be examined or examined on, or who may hereafter attend or examine on, from disclosing any confidential information which is thereby acquired, and I expressly authorize each physician to make such disclosure.

Witness: 10/2/29
Signed: James L. Bell
Agent's Signature: James L. Bell

RETAIL CREDIT COMPANY LIFE REPORT



COLUMBIA OFFICE

Mail No. 213 Columbia, S.C.
11-5-34
Bell, James Lanier
Columbia, S.C. 1603 Cervaie St.
Druggist-Sunrise Pharmacy

INSURANCE HISTORY

Age 23

CONFIDENTIAL

1. About how long have you or each of your dependents known him?	A 3 yr. 3 yr.
2. How many times have you or your dependents been with him or heard of him?	A Today
3. About what is his age, and what is his usual character?	A 23 Anglo Saxon
4. What are his usual daily duties?	A Clerk on front
5. Has he any dependents other than those given above? (If so, what?)	A No
6. Has he ever been in automobile, motor, or any business sport?	A No
7. Has he ever been in any kind of motor car as pilot or passenger, or is he licensed to drive any motor car?	A No
8. About what would you estimate his net worth?	A Small
9. About what is his net annual income from his work or business?	A \$7-800
10. About what are his usual habits, if any, has he been other sources?	A None
11. Is he a good character?	A Yes
12. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
13. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
14. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
15. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
16. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
17. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
18. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
19. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
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21. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
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29. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
30. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
31. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
32. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
33. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
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92. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
93. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
94. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
95. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
96. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
97. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
98. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
99. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No
100. Is he a good character, as to credit, reputation, reputation of sight or credit?	A No

No-but takes a drink.

No

No

No

Yes

Was-bottled beer

No

Yes

REMARKS: 11-a. BUSINESS-DUTIES: Describe duties in detail, present and past business activity.
11-b. PERSONAL-HEALTH: Describe on health, marital status, standing as a citizen.

BUSINESS-DUTIES: Your applicant formerly attended school here. For the last four or five months, he has been working for his brother, who owns the above drug store, as soda clerk or front man. He is not a druggist and does not fill prescriptions, but waits on the front trade. Does no delivery work.

PERSONAL-HEALTH: James Lanier Bell is single and stays in a nice section. His general standing is reputable and health apparently good.

BEER, WINE & WHISKEY SALES: This store sells legal bottled beer and applicant personally dispenses this over a counter, for consumption on the premises, as a side line commodity. He has not had any present or past whiskey connections and the general reputation of this store is good.

[fol. 73]

MEMBERSHIP APPLICATION

I hereby make application for membership in Lodge No. _____ of Preferred Life Assurance Society, located at _____ and agree to present myself for induction into this Lodge as soon as possible.

Dated at _____ this _____ day of _____, 19 _____

Applicant.

[fol. 74]

EXHIBIT "D" TO ANSWER

January 10, 1936.

Mr. James L. Bell, 1603 Gervais Street, Columbia, South Carolina.

DEAR MR. BELL:

We have been requested by our Columbia Office to write you in regard to the position you hold in your division. We wish to advise that you are still holding position number 5 in your division (F)C, Class 23. It seems that you have been placed in a group of "stickers", who are wise enough not to let their Certificates lapse. Of course, sooner or later there will be deaths in this group, and when one of the members holding a lower number than yours dies, you will move down two places, and when one holding a higher position dies, you will move down one place. Should any of these members holding the lower numbers become financially unable to continue their payments, they would, of course, be lapsed and you would take advantage of their having dropped out by moving down.

Trusting this is the information you desired, and that we will have the pleasure of delivering you a Contingent Endowment Check at sometime in the near future, we are

Fraternally yours, Preferred Life Assurance Society.
By ———, General Manager.

SHL/W/1

[fol. 75] EXHIBIT "E" TO ANSWER
(Copy)

April 4, 1938.

Mr. James Lanier Bell, 1603 Gervais Street, Columbia,
S. C.

DEAR MR. BELL:

We have been requested by our Columbia Office to write you in regard to the number of members in your group. Since all information of this nature is kept in the Home Office, it was necessary that the information be forwarded from this office.

There are now ten active members in your Division (F)C, of Class 23, in which you are holding a position number 4.

Trusting the above is the information you desired, and that we will have the pleasure of paying you a Contingent Endowment Claim before long, we are

Fraternally yours, Preferred Life Assurance Society.
By ———, General Manager.

SHL:w:1

[fol. 76] EXHIBIT "F" TO ANSWER
(Copy)

January 31, 1940.

Mr. James L. Bell, 1603 Gervais Street, Columbia, S. C.

DEAR MR. BELL:

We have been requested by our South Carolina Office to inform you as to your position and the number of members in your group.

You are holding a position #4 in Division (F)C, of Class 23, and there are at this time ten active members in your division. In holding a position #4 you are just outside of the circle in which Contingent Endowment Claims mature. The #1 in the group will be paid on the first death in the group, if his certificate is in force. The #2 will be paid on the death of the #1, if both certificates are in force. Should either the #1 or #2 die, and the other

be more than ninety days delinquent with his premium payments, the #3 would be paid.

We trust this is the information you desired, and that we will have the pleasure before many years of paying you a Contingent Endowment Claim.

Fraternally yours, Preferred Life Assurance Society.
By — — —, General Manager.

SHL:w1

cc: Miss Rosalie Brogdon.

[fol. 77] EXHIBIT "G" TO ANSWER

Joseph E. Justice, President; A. F. Whiting, General Counsel, J. J. Warren, Asst. Secretary; M. M. Longshore, Sec'y. and Treas.; B. Cosby Bird, Medical Director; F. M. Phillippi, Actuary.

Preferred Life Assurance Society
Home Office
Montgomery, Ala.

December 16, 1939.

DEAR MEMBER:

A special meeting of the Supreme Lodge of our Society will be called for January 15, 1940, at which meeting important matters affecting the interest of our members will be considered and acted on.

A delegate to said meeting is to be elected by the members at the regular monthly meeting of your Local Lodge, which meeting will be held Wednesday, December 20, 1939 at 7:30 P. M. at the local Lodge room located in the W O W Hall, Winter Building, corner Dexter Avenue and South Court Street, Montgomery, Alabama. We will have a banquet immediately after the close of the Lodge meeting.

It is important that you attend this meeting and assist in electing a delegate of your choice to said Supreme Lodge meeting.

Be sure to come.

Fraternally yours, Preferred Life Assurance Society.
By J. J. Warren, Ass't. Sec'y.

JJW/bs

[fol. 78] IN UNITED STATES DISTRICT COURT

ANSWERS TO THE INTERROGATORIES AND OBJECTIONS TO CERTAIN INTERROGATORIES—Filed February 14, 1941

Comes the Preferred Life Assurance Society, by its Secretary, J. J. Warren, and for answer to the interrogatories propounded by the plaintiff, and as objections to certain of said interrogatories, says:

[fol. 79]

Part I—Number of Divisions for \$1,000 Certificates

Section 1. Feb. 16, 1929

Section 2. 504

Section 3. All

Section 4. 325

Section 5. 179

Section 6. #3

Section 7.

Age Div.	Age Div.	Age Div.	Age Div.	
a. 16-11.	k. 26-12.	u. 36-10	ee. 46-11.	
b. 17-10.	l. 27-12.	v. 37-10.	ff. 47-10.	
c. 18-10.	m. 28-10.	w. 38-11.	gg. 48-10.	
d. 19-10.	n. 29-10.	x. 39-10.	hh. 49-10.	
e. 20-12.	o. 30-10.	y. 40-12.	ii. 50-11.	
f. 21-10.	p. 31-10.	z. 41-10.	jj. 51-11.	
g. 22-10.	q. 32-10.	aa. 42-11.	kk. 52-10.	
h. 23-10.	r. 33-13.	bb. 43-10.	ll. 53-11.	
i. 24-10.	s. 34-11.	cc. 44-10.	mm. 54-10.	
j. 25-11.	t. 35-10.	dd. 45-10.	nn. 55-11.	
104	108	104	105	421—Total

Section 8.

a. 16-0.	k. 26-2.	u. 36-1.	ee. 46-2.
b. 17-5.	l. 27-0.	v. 37-2.	ff. 47-2.
c. 18-0.	m. 28-1.	w. 38-1.	gg. 48-3.
d. 19-1.	n. 29-0.	x. 39-1.	hh. 49-6.
e. 20-2.	o. 30-0.	y. 40-0.	ii. 50-2.
f. 21-0.	p. 31-0.	z. 41-1.	jj. 51-9.

g. 22-4.	q. 32-4.	aa. 42-1.	kk. 52-8.	
h. 23-1.	r. 33-1.	bb. 43-4.	ll. 53-5.	
i. 24-0.	s. 34-0.	cc. 44-6.	mm. 54-5.	
j. 25-0.	t. 35-2.	dd. 45-4.	nn. 55-8.	
13	10	21	50	94—Total

Section 9. 1456. Includes divisions opened in May 1930 and those taken over from Federal Life Assurance Society in May 1932.

Section 10. 1454. Two groups closed.

Section 11. Florida—July 19, 1937. Louisiana—January 2, 1933. Georgia—January 1, 1932. Mississippi—May 1, 1932. South Carolina—Aug. 9, 1933. Tennessee—Nov. 12, 1935.

Section 12. No new divisions opened.	} Members wherever located placed in existing divisions totalling 1454. No other division opened.
Section 13. No new divisions opened.	
Section 14. No new divisions opened.	
Section 15. No new divisions opened.	
Section 16. No new divisions opened.	
Section 17. No new divisions opened.	
Section 18. 1454. Two divisions closed before Florida was entered.	

[fol. 80]

Section 19. 1456. Same as Alabama.	Divisions were not separated by States, members from all States being placed in existing divisions irrespective of residence.
Section 20. 1456. Same as Alabama.	
Section 21. 1456. Same as Alabama.	
Section 22. 1456. Same as Alabama.	
Section 23. 1454. Same as Alabama.	
Section 24. 1454. Same as Section #18.	
Section 25. 1454. Same as Alabama.	
Section 26. 1454. Same as Alabama.	
Section 27. 1454. Same as Alabama.	
Section 28. 1454. Same as Alabama.	
Section 29. 1454. Same as Alabama.	
Section 30. Yes. Various types of Insurance issued but Preferred Endowment issued in units of \$1,000 only.	

Section 31. See above.

Section 32.

Part II

(a)	No. Maximum Members	(b) Year
Alabama	4896	1940
Florida	120	1940
Georgia	1918	1935
South Carolina	1455	1940
Louisiana	1565	1938
Mississippi	956	1935
Tennessee	199	1938
Section 33. Alabama	4896	In addition to this there is 845 policies reinsured for The First National Life Assurance Society, of Atlanta, Georgia. Policies reinsured on a double liability basis, on account of Contingent Endowment feature.
Florida	120	
Georgia	1376	
South Carolina	1455	
Louisiana	1361	
Mississippi	864	
Tennessee	169	
	10,241	

Section 34.

State of Alabama

Age Div.	Age Div.	Age Div.	Age Div.
a. 16-11.	k. 26-10.	u. 36-9.	ee. 46-7.
b. 17-9.	l. 27-10.	v. 37-10.	ff. 47-7.
c. 18-9.	m. 28-11.	w. 38-10.	gg. 48-7.
d. 19-9.	n. 29-11.	x. 39-10.	hh. 49-6.
e. 20-8.	o. 30-10.	y. 40-10.	ii. 50-6.
f. 21-9.	p. 31-10.	z. 41-9.	jj. 51-6.
g. 22-9.	q. 32-10.	aa. 42-9.	kk. 52-5.
h. 23-10.	r. 33-10.	bb. 43-9.	ll. 53-5.
i. 24-10.	s. 34-10.	cc. 44-9.	mm. 54-5.
j. 25-10.	t. 35-11.	dd. 45-7.	nn. 55-5.

[fol. 81] Section 35. Florida. Same as Alabama.

Section 36. Georgia. Same as Alabama.

Section 37. South Carolina. Same as Alabama.

Section 38. Louisiana. Same as Alabama.

Section 39. Mississippi. Same as Alabama.

Section 40. Tennessee. Same as Alabama.

Section 41. Alabama.

Age Div.	Age Div.	Age Div.	Age Div.
a. 16-11.	k. 26-10.	u. 36-9.	ee. 46-7.
b. 17-9.	l. 27-10.	v. 37-9.	ff. 47-6.
c. 18-9.	m. 28-10.	w. 38-10.	gg. 48-6.
d. 19-9.	n. 29-11.	x. 39-9.	hh. 49-6.
e. 20-8.	o. 30-10.	y. 40-9.	ii. 50-6.
f. 21-9.	p. 31-10.	z. 41-8.	jj. 51-5.
g. 22-9.	q. 32-10.	aa. 42-8.	kk. 52-5.
h. 23-9.	r. 33-10.	bb. 43-8.	ll. 53-4.
i. 24-10.	s. 34-10.	cc. 44-9.	mm. 54-4.
j. 25-10.	t. 35-11.	dd. 45-7.	nn. 55-5.

Section 42. Florida. Same as Alabama.

Section 43. Georgia. Same as Alabama.

Section 44. South Carolina. Same as Alabama.

Section 45. Louisiana. Same as Alabama.

Section 46. Mississippi. Same as Alabama.

Section 47. Tennessee. Same as Alabama.

Section 48. Alabama. No empty Divisions December 31, 1934.

Section 49. Alabama. No empty Divisions December 31, 1935.

Section 50. Alabama. No empty Divisions December 31, 1936.

Section 51. Alabama. No empty Divisions December 31, 1937.

Section 52. Alabama. No empty Divisions December 31, 1938.

Section 53. Alabama. No empty Divisions December 31, 1939.

Section 54. Alabama. No empty Divisions December 31, 1940.

Section 55. Florida. Not operating in Florida during 1935 and 1936.

Section 56. Florida. Not operating in Florida during 1935 and 1936.

Section 57. Florida. No empty Divisions December 31, 1937.

Section 58. Florida. No empty Divisions December 31, 1938.

Section 59. Florida. No empty Divisions December 31, 1939.

Section 60. Florida. No empty Divisions December 31, 1940.

Section 61. Georgia. No empty Divisions December 31, 1934.

Section 62. Georgia. No empty Divisions December 31, 1935.

Section 63. Georgia. No empty Divisions December 31, 1936.

Section 64. Georgia. No empty Divisions December 31, 1937.

Section 65. Georgia. No empty Divisions December 31, 1938.

[fol. 82] Section 66. Georgia. No empty Divisions December 31, 1939.

Section 67. Georgia. No empty Divisions December 31, 1940.

Section 68. South Carolina. No empty Divisions December 31, 1935.

Section 69. South Carolina. No empty Divisions December 31, 1936.

Section 70. South Carolina. No empty Divisions December 31, 1937.

Section 71. South Carolina. No empty Divisions December 31, 1938.

Section 72. South Carolina. No empty Divisions December 31, 1939.

Section 73. South Carolina. No empty Divisions December 31, 1940.

Section 74. Louisiana. No empty Divisions December 31, 1935.

Section 75. Louisiana. No empty Divisions December 31, 1936.

Section 76. Louisiana. No empty Divisions December 31, 1937.

Section 77. Louisiana. No empty Divisions December 31, 1938.

Section 78. Louisiana. No empty Divisions December 31, 1939.

Section 79. Louisiana. No empty Divisions December 31, 1940.

Section 80. Mississippi. No empty Divisions December 31, 1935.

Section 81. Mississippi. No empty Divisions December 31, 1936.

Section 82. Mississippi. No empty Divisions December 31, 1937.

Section 83. Mississippi. No empty Divisions December 31, 1938.

Section 84. Mississippi. No empty Divisions December 31, 1939.

Section 85. Mississippi. No empty Divisions December 31, 1940.

Section 86. Tennessee. No empty Divisions December 31, 1935.

Section 87. Tennessee. No empty Divisions December 31, 1936.

Section 88. Tennessee. No empty Divisions December 31, 1937.

Section 89. Tennessee. No empty Divisions December 31, 1938.

Section 90. Tennessee. No empty Divisions December 31, 1939.

Section 91. Tennessee. No empty Divisions December 31, 1940.

Section 92. Application of Arthur Samuel Jones, Route #1, Augusta, Georgia, was rejected by our Underwriting Department. No Certificates ever offered him. He never knew at what Position his Application was registered.

Section 93. Possibly Certificates have been refused because of Position number, but we have no records of such cases.

Section 94. See Section 93.

Section 95. No.

Section 96. No.

[fol. 83] Section 97. Position #11, issued July 2, 1940, William Hugh Henry, c/o W. D. Henry, Roanoke, Alabama, Certificate #38353, Class 16, Division (P) D. Other Positions Number Eleven have been sold, but none higher.

Part III—Number of Field Agents Selling Contingent Endowment Insurance

Section 98. Field agents are termed as "Organizers".

Section 99. List of Organizers by States as of February 11, 1941 attached. Our records of Organizers, many of whom are associated with the Society for only a short while are not kept in such manner that information asked is available from our records. This defendant now has employed more agents soliciting memberships and applications for certificates of contingent endowment insurance than at any time in the history of this Society.

Section 106. W. Guy Longshore was one of the corporators and one of the original Board of Trustees of The Preferred Life Assurance Society.

Section 107. W. Guy Longshore is General Manager of The First National Life Assurance Society, of Atlanta, Georgia.

Section 108. W. Guy Longshore is still a member of the Board of Trustee of The Preferred Life Assurance Society.

Section 109. The First National Life Assurance Society was chartered by the State of Georgia in 1936, the exact date is unknown. This information can be obtained at the State Capitol in Atlanta, Georgia.

Section 110. This information could be better obtained from The First National Life Assurance Society, since The Preferred Life Assurance Society makes no effort to keep up with the whereabouts of the First National Life Assurance Society's Organizers. We are answering these questions below as best we can from the information we have in this office.

a. The First National Life Assurance Society does not operate in Alabama.

b. Three.

c. Two.

d. The First National Life Assurance Society does not operate in South Carolina.

[fol. 84] Section 111. Yes.

Part IV. *Officers and Directors*

Section 112. M. M. Longshore is the wife of Spencer H. Longshore.

Section 113. Spencer H. Longshore and W. Guy Longshore are brothers.

Section 114. Spencer H. Longshore is General Manager of The Preferred Life Assurance Society and holds an overwriting contract with the Society.

Section 115. Spencer H. Longshore was an agent for The Liberty National Life Insurance Company of Birmingham, Alabama, prior to 1928. W. Guy Longshore was never connected with that Company.

Section 116. Spencer H. Longshore was an agent for The Liberty National Life Insurance Company for approximately eight years.

Section 117. As stated above, W. Guy Longshore was never connected with The Liberty National Life Insurance Company.

Section 118. The Liberty National Life Insurance Company wrote a Contingent Endowment type of insurance prior to 1928 and still writes it according to our understanding. More information about The Liberty National Life Insurance Company can be obtained at the Department of Insurance, at the State Capital, Montgomery, Alabama.

Section 119. a. No.

f. No.

b. Yes.

g. No.

c. No.

h. No.

d. No.

i. No.

e. No.

j. No.

Section 122. a. No.

g. Don't know.

b. No.

h. No.

c. No.

i. Don't know.

d. No.

j. No.

e. No.

k. No.

f. No.

l. No.

Section 121. This section has no seeming connection with Interrogatory Number 118. It is impossible to answer the questions in Section 121.

Section 120. a. Yes.

g. Don't know.

b. Yes.

h. No.

- | | |
|--------|----------------|
| c. No. | i. Don't know. |
| d. No. | j. No. |
| e. No. | k. No. |
| f. No. | l. Yes. |

Section 123. Spencer H. Longshore—

- (a) The First National Life Assurance Society.
[fol. 85] (b) Atlanta, Georgia.
(c) Trustee.
(d) From 1936 to date.
(e) Connection not terminated.
(f) Society still in business.
(g) See (f).

W. Guy Longshore—

- (a) The First National Life Assurance Society.
(b) Atlanta, Georgia.
(c) Trustee and General Manager.
(d) From 1936 to date.
(e) Connection not terminated.
(f) Society still in business.
(g) See (f).

F. M. Phillippi—

- (a) The First National Life Assurance Society.
(b) Atlanta, Georgia.
(c) President and Trustee, Actuary.
(d) President and Trustee for approximately one year.
Actuary for about three years.
(e) Fall of 1939.
(f) Society still in business.
(g) See (f).

Section 124. Spencer H. Longshore—

- (a) 1. Liberty National Life Insurance Company.
2. Preferred Life Assurance Society.
3. First National Life Assurance Society.
(b) 1. Alabama.
2. Alabama.
3. Georgia.
(c) 1. Birmingham, Alabama.
2. Montgomery, Alabama.
3. Atlanta, Georgia.

(d) 1. Fraternal converted to stock.

2. Fraternal.

3. Fraternal.

(e) 1. Life Insurance business.

2. Life Insurance business.

3. Life Insurance business.

(f) 1. Organizer or Agent.

2. Organizer and General Manager, Trustee.

3. Trustee.

[fol. 86] (g) 1. About 1920.

2. 1928.

3. 1936.

(h) 1. About July 1, 1928.

2. Still connected.

3. Still connected.

(i) 1. No.

2. No.

3. No.

(j) 1. See (i).

2. See (i).

3. See (i).

(k) 1. See (i).

2. See (i).

3. See (i).

W. Guy Longshore—

(a) 1. Preferred Life Assurance Society.

2. First National Life Assurance Society.

(b) 1. Alabama.

2. Georgia.

(c) 1. Montgomery, Alabama.

2. Atlanta, Georgia.

(d) 1. Fraternal.

2. Fraternal.

(e) 1. Life Insurance business.

2. Life Insurance business.

(f) 1. Trustee and Organizer (Agent).

2. Trustee and General Manager.

- (g) 1. 1928.
- 2. 1936.

- (h) 1. Still Trustee.
- 2. Still connected as in (f).

- (i) 1. No.
- 2. No.

- (j) 1. See (i).
- 2. See (i).

- (k) 1. See (i).
- 2. See (i).

M. M. Longshore—

- (a) 1. Preferred Assurance Society.

- (b) 1. Alabama.

- (c) 1. Montgomery, Alabama.

- (d) 1. Fraternal.

- (e) 1. Life Insurance business.

- (f) 1. Secretary and Treasurer, Trustee.

- (g) 1. 1928.

- (h) 1. December, 1939.

- (i) 1. No.

[fol. 87] (j) 1. See (i).

- (k) 1. See (i).

Travis H. Justice—

- (a) 1. Preferred Life Assurance Society.

- (b) 1. Alabama.

- (c) 1. Montgomery, Alabama.

- (d) 1. Fraternal.

- (e) 1. Life Insurance business.

- (f) 1. President and Trustee.

- (g) 1. 1928.

- (h) 1. April, 1930.

- (i) 1. No.

- (j) 1. See (i).

- (k) 1. See (i).

F. A. Rogers—

- (a) 1. Preferred Life Assurance Society.
2. Franklin Life Insurance Company.
- (b) 1. Alabama.
2. Illinois.
- (c) 1. Montgomery, Alabama.
2. Springfield, Illinois.
- (d) 1. Fraternal.
2. Stock.
- (e) 1. Life Insurance business.
2. Life Insurance business.
- (f) 1. Trustee.
2. General Agent.
- (g) 1. 1928.
2. 1940.
- (h) 1. April, 1930.
2. Still connected.
- (i) 1. No.
2. No.
- (j) 1. See (i).
2. See (i).
- (k) 1. See (i).
2. See (i).

[fol. 88] Joseph E. Justice—

- (a) 1. Liberty National Life Insurance Company.
2. Preferred Life Assurance Society.
- (b) 1. Alabama.
2. Alabama.
- (c) 1. Birmingham, Alabama.
2. Montgomery, Alabama.
- (d) 1. Fraternal converted to Stock.
2. Fraternal.
- (e) 1. Life Insurance business.
2. Life Insurance business.
- (f) 1. Organizer or Agent.
2. Trustee, Organizer and President.
- (g) 1. About 1919.
2. About February 1, 1929.
- (h) 1. About February 1, 1929.
2. Still connected.
- (i) 1. No.
2. No.
- (j) 1. See (i).

- 2. See (i).
- (k) 1. See (i).
- 2. See (i).

Olin Ware—(Error in name through Interrogatives)

- (a) 1. Preferred Life Assurance Society.
- (b) 1. Alabama.
- (c) 1. Montgomery, Alabama.
- (d) 1. Fraternal.
- (e) 1. Life Insurance business.
- (f) 1. Organizer and Trustee.
- (g) 1. 1928.
- (h) 1. April 1930.
- (i) 1. No.
- (j) 1. See (i).
- (k) 1. See (i).

R. D. Carlton—

- (a) 1. Preferred Life Assurance Society.
- (b) 1. Alabama.
- (c) 1. Montgomery, Alabama.
- (d) 1. Fraternal.
- (e) 1. Life Insurance business.
- (f) 1. Trustee and Clerk.
- (g) 1. 1928.

[fol. 89] (h) 1. Still connected.

- (i) 1. No.
- (j) 1. See (i).
- (k) 1. See (i).

Guy I. Badger—

- (a) 1. Preferred Life Assurance Society.
- (b) 1. Alabama.
- (c) 1. Montgomery, Alabama.
- (d) 1. Fraternal.
- (e) 1. Life Insurance Business.
- (f) 1. Trustee.
- (g) 1. 1928.
- (h) 1. April, 1930.
- (i) 1. No.
- (j) 1. See (i).
- (k) 1. See (i).

Dr. B. Cosby Bird—

- (a) 1. Medical Examiner for various companies.
- 2. Preferred Life Assurance Society.

- (b) 1. Unknown.
- 2. Alabama.
- (c) 1. Unknown.
- 2. Montgomery, Alabama.
- (d) 1. Unknown.
- 2. Fraternal.
- (e) 1. Unknown.
- 2. Life Insurance business.
- (f) 1. Medical Examiner.
- 2. Medical Examiner and Medical Director.
- (g) 1. Unknown.
- 2. 1928.
- (h) 1. Unknown.
- 2. Still connected.
- (i) 1. Unknown.
- 2. No.
- (j) 1. See (i).
- 2. See (i).
- (k) 1. See (i).
- 2. See (i).

[fol. 90] J. J. Warren—

- (a) 1. Liberty National Life Insurance Company.
- 2. Preferred Life Assurance Society.
- (b) 1. Alabama.
- 2. Alabama.
- (c) 1. Birmingham, Alabama.
- 2. Montgomery, Alabama.
- (d) 1. Fraternal converted to Stock.
- 2. Fraternal.
- (e) 1. Life Insurance business.
- 2. Life Insurance business.
- (f) 1. Cashier (collector)
- 2. Bookkeeper, Trustee, Assistant-Secretary, and Secretary.
- (g) 1. About 1927.
- 2. September 1929.
- (h) 1. April 1929.
- 2. Still connected.
- (i) 1. No.
- 2. No.
- (j) 1. See (i).
- 2. See (i).

(k) 1. See (i).

2. See (i)

F. M. Phillippi—

(a) 1. Actuary for various Companies.

2. Preferred Life Assurance Society.

3. First National Life Assurance Society.

(b) 1. Unknown.

2. Alabama.

3. Georgia.

(c) 1. Unknown.

2. Montgomery, Alabama.

3. Atlanta, Georgia.

(d) 1. Unknown.

2. Fraternal.

3. Fraternal.

(e) 1. Unknown.

2. Life Insurance business.

3. Life Insurance business.

(f) 1. Unknown.

2. Actuary.

3. President, Trustee and Actuary.

(g) 1. Unknown.

2. 1935.

3. 1936.

(h) 1. Unknown.

2. 1939.

3. 1939.

(i) 1. Unknown.

2. No.

3. No.

[fol. 91] (j) 1. See (i).

2. See (i).

3. See (i).

(k) 1. See (i).

2. See (i).

3. See (i).

Section 125. Spencer. H. Longshore was one of the Organizers of The Preferred Life Assurance Society, but W. Guy Longshore was not. In answering this question, the term "Organizers" is construed to mean one of the people who organized the Society and not an Organizer or Agent. The term "Organizer" may have two meanings in connection with a Fraternal Insurance Company.

Section 126. Joseph E. Justice was associated with Spencer H. Longshore in the organization of The Preferred Life Assurance Society.

Section 127. a. Travis H. Justice, Supreme President, Birmingham, Alabama.

F. A. Rogers, Supreme Vice-President, Auburn, Alabama.

Mrs. S. H. Longshore, Secretary and Treasurer, Montgomery, Alabama.

b. Same as (a).

c. Joseph E. Justice, President, Montgomery, Alabama.

M. M. Longshore, Secretary and Treasurer, Montgomery, Alabama.

d. Same as (c).

e. Same as (c).

f. Same as (c).

g. Same as (c).

h. Same as (c).

i. Same as (c).

j. Joseph E. Justice, President, Montgomery, Alabama.

M. M. Longshore, Secretary and Treasurer, Montgomery, Alabama.

J. J. Warren, Assistant-Secretary, Montgomery, Alabama.

k. Same as (i).

l. Joseph E. Justice, President, Montgomery, Alabama.

J. J. Warren, Secretary, Montgomery, Alabama.

{fol. 92]

A. F. Whiting, Treasurer, Montgomery, Alabama.

m. Same as (1).

Section 128. Board of Directors from August 1928 to April 26, 1930—

1. T. J. Justice, Railway Mail Clerk, U. S. Government, Birmingham, Alabama. Home Address was Birmingham, Alabama.

2. F. A. Rogers, Manager of moving picture house, Wilby Theatres, Inc., of Birmingham, Alabama. Employed in Auburn,

- Alabama. Home address was Auburn, Alabama.
3. Olin Ware, owner of billiard hall. Employed by self, Auburn, Alabama. Home address was Auburn, Alabama.
 4. Guy Badger, automobile salesman, Hobbie Motor Car Company, Montgomery, Alabama. Home address, Montgomery, Alabama.
 5. R. D. Carlton, Manager of Delivery Department, Montgomery Fair, Montgomery, Alabama. Home address, Montgomery, Alabama.
 6. W. Guy Longshore, Ticket Agent for L. & N. Railroad Company, Montgomery, Alabama. Home address, Montgomery, Alabama.
 7. Mrs. S. H. Longshore, Secretary and Treasurer of Preferred Life Assurance Society of Montgomery, Alabama. Home address, Montgomery, Alabama.

Board of Directors from April 26, 1930 to December 15, 1939

1. J. E. Justice, President, Preferred Life Assurance Society, Montgomery, Alabama. Home address, Montgomery, Alabama.
2. M. M. Longshore, Secretary and Treasurer, Preferred Life Assurance Society, Montgomery, Alabama. Home address, Montgomery, Alabama.
3. R. D. Carlton, Manager of Delivery Department, Montgomery Fair, Montgomery, Alabama. Home address, Montgomery, Alabama. Also, Clerk, Dixie Office Supply Company, Montgomery, Alabama.
4. W. Guy Longshore, with L. & N. Railroad as Ticket Agent until August 1934. Organizer with Preferred Life Assurance Society from August 1934 to July 1936. Business address and Home address, Montgomery, Alabama. From July 1936, General Manager First National Life Assurance Society, Atlanta, Georgia. Home address, Atlanta Georgia.

5. A. D. Merchant, Organizer, Preferred Life Assurance Society, Montgomery, Alabama. Home address, various addresses until January 1, 1933; from that time until the present, business and home address, Baton Rouge, Louisiana.
6. S. H. Longshore, General Manager, Preferred Life Assurance Society, Montgomery, Alabama. Home address Montgomery, Alabama.
7. J. J. Warren, Bookkeeper and Assistant-Secretary, Preferred Life Assurance Society, Montgomery, Alabama. Home address, Montgomery, Alabama.

Board of Directors from December 15, 1939 to date.

1. J. E. Justice, President, Preferred Life Assurance Society, Montgomery, Alabama. Home address, Montgomery, Alabama.
2. A. F. Whiting, Attorney and Treasurer, Preferred Life Assurance Society, Montgomery, Alabama. Home address Montgomery, Alabama.
3. R. D. Carlton, Clerk, Preferred Life Assurance Society, Montgomery, Alabama. Home address, Montgomery, Alabama.
4. W. Guy Longshore, General Manager of First National Life Assurance Society, Atlanta, Georgia. Home address Atlanta, Georgia.

[fol. 94]

5. A. D. Merchant, Organizer, Preferred Life Assurance Society, Montgomery, Alabama. Home address, Baton Rouge, Louisiana.
6. S. H. Longshore, General Manager, Preferred Life Assurance Society, Montgomery, Alabama. Home address Montgomery, Alabama.
7. J. J. Warren, Secretary, Preferred Life Assurance Society, Montgomery, Alabama. Home address, Montgomery, Alabama.

Section 129. a. None g. \$3,600.00
 b. \$1,250.00 h. \$15,000.00
 c. \$3,200.00 i. \$15,000.00

	d. \$3,600.00	j. \$15,000.00
	e. \$3,600.00	k. \$14,166.66
	f. \$3,600.00	l. \$5,000.00
Section 130.	a. \$8,785.17	g. \$8,436.23
	b. \$6,815.89	h. None
	c. \$6,989.02	i. \$74.31
	d. \$8,430.25	j. None
	e. \$9,668.71	k. None
	f. \$8,632.17	l. None
Section 131.	a. \$8,785.17	g. \$12,036.23
	b. \$8,065.89	h. \$15,000.00
	c. \$10,189.02	i. \$15,074.31
	d. \$12,030.25	j. \$15,000.00
	e. \$13,268.71	k. \$14,166.66
	f. \$12,232.17	l. \$5,000.00
Section 132.	a. \$1,750.00	g. None
	b. \$2,375.00	h. None
	c. \$2,575.00	i. None
	d. \$2,600.00	j. None
	e. \$2,600.00	k. None
	f. None	l. None
Section 133.	a. \$6,028.36	g. \$27,304.39
	b. \$14,168.97	h. \$35,555.06
	c. \$11,812.13	i. \$38,873.52
	d. \$16,604.39	j. \$39,359.03
	e. \$21,273.80	k. \$41,809.53
	f. \$26,225.25	l. \$48,180.23
Section 134.	a. \$7,778.36	g. \$27,304.39
	b. \$16,543.97	h. \$35,555.06
	c. \$14,387.13	i. \$38,873.52
	d. \$19,204.39	j. \$39,359.03
	e. \$23,873.80	k. \$41,809.53
	f. \$26,225.25	l. \$48,180.23
Section 135.	a. None	g. \$2,625.00
	b. None	h. \$1,900.00
	c. None	i. None
	d. None	j. None
	e. None	k. None
	f. \$1,100.00	l. None
[fol. 95]		
Section 136.	a. \$77.29	g. \$247.75
	b. \$66.92	h. \$134.25

	c. \$35.73	i. None
	d. \$64.06	j. None
	e. \$46.79	k. None
	f. \$158.99	l. None
Section 137.	a. \$77.29	g. \$2,872.75
	b. \$66.92	h. \$2,034.25
	c. \$35.73	i. None
	d. \$64.06	j. None
	e. \$46.79	k. None
	f. \$1,258.99	l. None
Section 138.	a. \$870.00	g. \$3,900.00
	b. \$1,040.00	h. \$3,900.00
	c. \$1,040.00	i. \$4,408.34
	d. \$1,040.00	j. \$5,216.66
	e. \$1,215.00	k. \$4,800.00
	f. \$1,900.00	l. None
Section 139.	a. None	g. None
	b. None	h. None
	c. None	i. \$98.75
	d. None	j. None
	e. None	k. None
	f. None	l. None
Section 140.	a. \$870.00	g. \$3,900.00
	b. \$1,040.00	h. \$3,900.00
	c. \$1,040.00	i. \$4,507.09
	d. \$1,040.00	j. \$5,216.66
	e. \$1,215.00	k. \$4,800.00
	f. \$1,900.00	l. None

Part V. *Connection between Preferred Life and First National Life*

Section 141. No.

Section 142. We know nothing of the First National Life Assurance Society's business in Alabama. This information can probably be obtained from that Company.

Section 143. Same as Section 142.

Section 144. See answer Section 141.

Section 145. Yes.

Section 146. Sometime in 1936. Exact date can be obtained from Department of Insurance in Atlanta, Georgia.

Section 147. We have no idea.

Section 148. See answer Section 147.

Part VI. Fraternal Workings of Preferred Life Assurance Society

Section 149.

[fol. 96] The subordinate lodges have been largely autonomous in their internal workings, and have changed their officers and locations from time to time, and the details of their operation prior to the year 1939 are not now available from the records of the Home Office of the Society. Defendant further says, on advice of counsel, that the detailed information concerning subordinate lodges called for is incompetent and immaterial to any substantial issues before the Court, and defendant objects, separately on said grounds, to each of said questions numbered 149 to 205 inclusive.

Further answering such questions in so far as they are relevant, defendant attaches hereto as Exhibit "A" a copy of report of Convention examination conducted of all the affairs of this defendant including its fraternal workings, and the relationship of its subordinate lodges, such examination having been conducted by the representatives of the States of Alabama, Mississippi and Tennessee pursuant to the requirements of the National Association of Insurance Commissioners.

Further answering, defendant attaches hereto as Exhibit "B" a list of all present subordinate lodges, their location and the names of the officers thereof.

Further answering, defendant hereto attaches as Exhibit "C" a list of the names and addresses of all organizers now employed by it.

Section 206. a. Yes.

b. Yes.

c. Yes.

Section 207. a.) In accordance with existing laws.

b.) By permission of the Commissioner of In-

c.) surance, the Society issues certificates to members without an examination within certain age limits. \$1,000 may be issued up through Age 40 for females and through Age 45 for males. All applica-

tions passed on by Medical Director after full private report received.

Section 208. No.

Section 209. None has ever received a dividend from the Preferred Life Assurance Society, but each member has been given extended and paid up insurance.

[fol. 97]

Section 210. a. \$59,372.77	g. \$414,827.74
b. \$105,932.85	h. \$452,475.54
c. \$147,742.10	i. \$492,802.38
d. \$218,915.50	j. \$511,087.10
e. \$277,997.70	k. \$527,088.18
f. \$353,925.63	l. \$566,164.37
Section 211. a. Society not or-	g. \$34,850.00
ganized.	h. \$72,800.00
b. \$4,750.00	i. \$72,477.27
c. \$4,000.00	j. \$88,231.30
d. \$20,550.00	k. \$75,054.84
e. \$42,000.00	l. \$72,394.64
f. \$34,000.00	m. \$79,076.62

Further answering, a complete statement of all items of receipts and all items of disbursements of defendant for the years 1937, 1938 and 1939 appear on pages 18 et seq. of the report of examination, a copy whereof is attached as Exhibit "C" to these answers.

[fol. 98] Preferred Life Assurance Society, by J. J. Warren, as Its Secretary.

Duly sworn to by J. J. Warren. Jurat omitted in printing.

[fols. 99-100] EXHIBIT "A"—To Defendants Answers to Plaintiff's Interrogatories

Report on Examination of the Preferred Life Assurance Society, Montgomery, Alabama, as of December 31, 1939

[fol. 101] Montgomery, Alabama, May 15, 1940.

Hon. Jess G. Read, Chairman, Committee on Examinations, National Association of Insurance Commissioners, Oklahoma City, Oklahoma.

Hon. Frank N. Julian, Superintendent of Insurance, Montgomery, Alabama.

Hon. John Sharp Williams, III, Commissioner of Insurance, Jackson, Mississippi.

Hon. Jas. M. McCormack, Commissioner of Insurance and Banking, Nashville, Tennessee.

Sirs:

In accordance with your respective appointments of authority, we have made an examination of the records and affairs of the Preferred Life Assurance Society, Montgomery, Alabama, as of December 31, 1939, and respectfully submit the following report:

History

The Preferred Life Assurance Society was organized and incorporated August 28, 1928 under, and by virtue of the provisions of Article 8 of Section #8439 of the Code of Alabama of 1923 and amendments thereto, as a fraternal benefit society, and was authorized to transact business in the State of Alabama on February 16, 1929. The Articles of Incorporation were filed for record in the office of the Judge of Probate of Montgomery County, Alabama, August 28, 1928, and are recorded in Book 10, Page 173, Corporation Record.

As of December 31, 1939, the Society was licensed and operating as fraternal benefit society, in the following states:

Alabama
Florida
Georgia

Louisiana
Mississippi
South Carolina

Tennessee

A fraternal benefit society is defined in Section #8439 of the Code of 1923, of the State of Alabama, as follows:

"Any corporation, society, order or Voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provision for the payment of

benefits in accordance with section 137 hereof, is hereby declared to be a fraternal benefit society."

Section 2 of Article 1 of the constitution of the Preferred Life Assurance Society reads, as follows:

Section 2.—Definition. Preferred Life Assurance Society is a fraternal benefit society without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries and not for profit, having a lodge system with ritualistic form of work and representative form of government."

Under date of May 16, 1932, the Society effected a merger with the Federal Life Insurance Society of Montgomery, Alabama. This merger was approved May 18, 1932 by the Superintendent of Insurance of the State of Alabama.

Corporate Records

The by-laws provide that the Supreme Lodge, or governing body, shall meet quadrennially. The minutes of these meetings are maintained in manuscript form, instead of the standard minute book record. These minutes were inspected and found to be properly recorded and officially signed.

The by-laws provide that the Board of Trustees shall meet quarterly. The Society maintains a regular minute book record of these meetings. This record was inspected and it was found that meetings are held regularly, as provided for, and the proceedings are properly recorded and officially signed.

Organization

The Constitution provides that the organized bodies of the Society shall consist of a supreme legislative body which is known as the "Supreme Lodge", and an unlimited number of subordinate bodies; each of which is known as a "Local Lodge."

All authority in the Society emanates from the Supreme Lodge, and all authority not specifically delegated by that body or conferred by the Constitution and Laws of the Society, is reserved to the Supreme Lodge. Authority is

delegated to the Board of Trustees, which is the executive body of the Society, to exercise all of the rights and powers [fol. 104] of the Supreme Lodge except the right to amend the Charter and Constitution.

At a meeting of the Supreme Lodge held April 26, 1930 the general management and control of the business and affairs of the Society was delegated to the Board of Trustees, with power by a three-fourth vote to amend the by-laws, subject, however, to the approval of the Supreme Lodge at the next quadrennial meeting. However, authority to raise or lower assessments and dues was not delegated to the Board of Trustees, but was expressly reserved to the Supreme Lodge.

The Constitution provides that the Supreme Lodge shall meet quadrennially on the second Friday in April, beginning with the year 1930, the meetings to be held in Montgomery, Alabama.

The original constitution provided that the first quadrennial meeting would be held four years from the date of the first meeting which was held April 26, 1930. The first quadrennial meeting was held May 25, 1934, at which meeting the present Constitution was adopted. The minutes of this meeting do not show that it was a called or adjourned meeting. Your examiners were informed that the meeting was merely postponed.

It is further provided that special sessions of the Supreme Lodge shall be called by the President of the Society: (a) when requested to do so by two-thirds of the chartered local lodges in good standing, provided that the expense [fol. 105] thereof shall be borne by the local lodges, (b) upon written request signed by a majority of the members of the Supreme Lodge; or (c) upon written request signed by all members of the Board of Trustees.

Section 1 of Article 4 of the Constitution, as amended, provides that the Supreme Lodge, as the supreme governing or legislative body, shall be composed of:

- a. The officers of the Society.
- b. The officers of the Supreme Lodge.
- c. The members of the Board of Trustees.
- d. The members of the Standing Committees, provided for in the Constitution.

e. The Elective Representatives, chosen by the members of the Society through the local lodges; provided, however, that the Elective Representatives shall constitute a majority in numbers and have not less than two-thirds of the votes or not less than the votes required to amend the Society's Constitution; and provided further that each officer of the Society, each member of the Board of Trustees, each member of Standing Committees and each duly Elected Representative, shall be entitled to one vote, but shall not vote by proxy.

Representatives to Supreme Lodge

Section 2 of Article X of the Constitution, as amended, provides that during the month of January preceding the regular quadrennial session of the Supreme Lodge, the Secretary of the Society shall notify the secretary of each local lodge the number of representatives to be elected, on the basis of one representative for each one thousand beneficial members, and one representative for each major fraction thereof, provision being made that the members of each state are entitled to at least one representative in the Supreme Lodge.

Section 3 of Article X provides that representatives to the Supreme Lodge from each of the several states shall be elected by the respective local lodges at their first regular meeting held during the month of February preceding the regular quadrennial session of the Supreme Lodge, and the result of these elections shall be certified to the Secretary of the Society.

In the preliminary report of June 30, 1939 attention was called to the inadequacy of the records of the Supreme Lodge and the absence of any records showing that the delegates thereto had been elected by the subordinate lodges and had been properly certified as required by the Constitution and By-Laws. Under the circumstances some doubt was cast upon the validity of the election of the trustees.

In order to remedy this situation and properly carry out certain recommendations of the Bureau of Insurance of the State of Alabama, it was requested that the Supreme Lodge be called into extraordinary session, to be constituted by representatives to be elected by the local lodges after due notice to each member of the time and place set for the election of the representatives, the elections to be held in strict conformity with the Constitutions and By-Laws. This

[fol. 107] meeting was held on January 15, 1940, at which trustees were elected in conformity with the Constitution and By-Laws. At this meeting the Supreme Lodge did by resolution ratify and approve all acts heretofore taken by the Supreme Lodge, the trustees and officers since the organization of the Society. An examination of the records of the Supreme Lodge and the local lodges indicates that the meetings and elections met fully the requirements of the Constitution and By-Laws.

Attention is directed to Subsection "e" of Section I of Article IV of the Constitution, as amended, pertaining to Elective Representatives to the Supreme Lodge. It is provided in that sub-section that the Elected Representatives shall constitute a majority in number and have not less than two-thirds of the votes or not less than the votes required to amend the Constitution. It is further provided that each officer of the Society, each member of the Board of Trustees, each member of Standing Committees and each duly Elected Representative, shall be entitled to one vote, but shall not vote by proxy.

At the meeting of the Supreme Lodge held in 1938, there were recorded as being present, eleven elected representatives and seven officers and trustees. Included in the eleven representatives present, were two trustees. In other words there were members of the Supreme Lodge present, who were Elected Representatives and at the same time were also officers of the Society, and as such, were entitled to [fol. 108] vote either as Elected Representative or as an officer. The by-laws are not clear as to whether, under such circumstances, it is intended that the same person may vote in two capacities. In any event a conflict of interest might arise so that the trustee would not truly represent the lodges, and for this reason, it might be desirable to amend the by-laws so that a trustee or officer would not be eligible to be an elected delegate.

Local Lodges

The following are extracts from the Constitution and laws of the Society with respect to local lodges:

Constitution, Article V., Section 1

"Status and Purpose of Local Lodge. For the purpose of administration, the perpetuation of a representative

form of government and the development of the moral, social, intellectual, patriotic and ritualistic features of the Society, subordinate organized bodies known as 'Local Lodges' may be chartered and instituted by the Society under such restrictions and with such powers and duties as are hereinafter provided for or as may be from time to time prescribed by the Supreme Lodge or the Board of Trustees in conformity with the Constitution and Laws of the Society; but the Society is in no manner responsible for the acts of such local lodges or their officers. The local lodge is the unit through which the ritualistic, educational, social and welfare work of the Society is carried on. There shall be as many local lodges chartered as, in the opinion of the Board of Trustees is necessary to further the best [fol. 109] interests of the Society and its members."

Laws, Chapter I, Sec. 3

"Beneficial Membership. Beneficial membership shall not be granted to anyone who is younger than sixteen years (except members of the Juvenile Department) or older than sixty years of age at nearest birthday at date of application. The age of a new member shall be figured from the date upon which the application was made. Every applicant for beneficial membership must be an acceptable white person not engaged in any immoral or prohibitive occupation or profession. Each applicant must make application on forms prescribed for this purpose, must subscribe to the obligation required of all members of the Society, must agree to present himself to his lodge for initiation, and must submit to a medical examination, where required by the laws of the State of member's residence, and when required by the Medical Director."

Laws, Chapter II, Sec. 4

"Forms and Conditions. Every application must be upon the form prescribed by the Board of Trustees and the applicant must be recommended by at least three beneficial members of the Society."

Laws, Chapter IX, Sec. 57a

"Local Lodges, When Instituted. Lodges may be organized subject to the approval of the Board of Trustees when

twenty-five eligible white persons may denote their willingness to conform to the laws of the Society. Lodges shall have control of their local affairs, but shall have no authority [fol. 110] to make contracts, waivers, representations, or agreements binding upon the Society. The form of petition for charter shall be prescribed by the President, and shall be signed by twenty-five applicants of good physical, moral and mental qualifications. No lodge shall be formed until the requisite number of policyholders have been accepted and the laws of the Society complied with. The organizers, before instituting a lodge, shall explain the duties of the officers, and shall install and instruct them and exemplify the secret work. He shall explain the requirements as to remittance of premiums and the adoption of the by-laws. Charters shall not be closed to lodges in towns having a population of 2,000 or less until 50 policyholders are in good standing; nor in towns having more than 2,000 or less than 5,000 population until 100 policyholders are in good standing; nor in towns with over 5,000 or less than 20,000 population until 200 policyholders are in good standing; nor in towns of more than 20,000 population until 300 policyholders are in good standing, without the consent of the organizers or salesman, provided he continues to solicit policyholders in said town or city."

Laws, Chapter IX, Sec. 58a

"Charter Members Defined. Charter members shall consist of those members necessary to be enrolled as members at a local lodge at its installation and such members shall be considered as duly elected, initiated and admitted to membership in accordance with the Constitution, laws, rules and [fol. 111] regulations and prescribed ritualistic ceremonies of such local lodge when enrolled as members of the local lodge and have signed the following obligation:

"I will assume all ritualistic obligations of the Society and give my pledge not to reveal them to anyone not entitled to receive them, and at the first opportunity I will present myself to the lodge mentioned in my application for initiation into the secret work of the Society, and *whether or not I am a charter member I shall abide by all laws of the Society regarding initiations and initiatory ceremonies.*"

Laws, Chapter X, Article III.

"This lodge shall be opened at the time prescribed in its by-laws if five members who are in good standing are present. Not less than that number shall constitute a quorum for the transaction of the business of the lodge. The Vice-Grand Commander shall preside at all meetings but, in his absence, the Vice-Grand Master shall preside, and if both should be absent, the next ranking officer shall preside."

Laws, Chapter X, Article VII.

"The officers of this lodge shall be chosen by ballot by a majority of all votes cast, except that where there is but one candidate nominated, the Vice-Grand Commander may declare the candidate elected by consent. If no choice is had after two ballots, the candidate receiving the least number of votes shall be dropped at each unsuccessful ballot and no ballot shall be considered a part of the poll unless cast for a previously nominated candidate."

[fol. 112] *Laws, Chapter X, Article VIII.*

"When an election is held to fill an office in this lodge, the presiding officer shall appoint two members to act as tellers and the election shall be conducted in a just and impartial manner; a register of the votes polled shall be kept, and should it appear that more votes have been polled than there are legally qualified voters present, the presiding officer shall declare the ballot illegal and void, and direct another ballot to be taken immediately; members voting shall then hand their ballots to the tellers, each giving his name, and the tellers shall deposit the ballots in the poll."

Your examiners fail to find any provisions in the Constitution or laws of the Society requiring an applicant for beneficial membership to be elected as a member of a local lodge and there are no specific provisions governing the election of members to local lodges.

In the preliminary report as of June 30, 1939, based upon an investigation of the lodge system and records, the examiners set out a number of findings tending to show that the fraternal features of the society were not being carried out in conformity with the definitions set out in the laws governing them, and expressed their doubts that the Society

was then being operated as a bonafide fraternal benefit society.

Your examiners now find that there are in existence and functioning twenty lodges, located in the following States:

[fol. 113] Alabama	5
South Carolina	4
Mississippi	4
Georgia	4
Louisiana	3
	<hr/>
Total	20

These lodges have regular times and places for meeting, have elected their own officers and committees, regularly ballot on applications for membership, and have records of candidates voted on and initiated, as well as of other proceedings of the lodges. Members are notified by post card in advance of the meetings. There is a follow-up on members who do not present themselves for initiation, and an effort made to have them present themselves for that purpose. The applications for lodge membership originate at the subordinate lodge instead of the Home Office, and the policy applications reaching the Home Office now appear to indicate a selection of the lodge by the member himself. Membership records of lodges are now kept in the local lodges as well as the Home Office. All present officers of subordinate lodges appear to have been regularly elected by the members thereof without suggestions from the Home Office.

We examined into the election of representatives to the extraordinary meeting of the Supreme Lodge held on January 15, 1940, and found that each subordinate lodge was advised through its Eminent Recorder of the time and place of the meeting, and the number of representatives to be [fol. 114] voted upon, requesting that the delegates be elected at the regular meeting in December, 1939. The necessary credential forms for certifying the representatives to the Supreme Lodge were enclosed. In addition, each member was notified by the Home Office of the time and place of the regular meeting, calling attention to the fact that the member was entitled to vote for the election of representatives to the Supreme Lodge meeting to be held January 15,

1940. The minutes and records of the subordinate lodges indicate that the by-laws were strictly complied with in the election of the representatives.

It is the opinion of your examiners that the Society is now meeting all reasonable requirements for a lodge system with ritualistic form of work and a representative form of Government.

Officers

The officers of the Society are elected by the Supreme Lodge at each regular quadrennial session thereof, and hold office until the next ensuing regular quadrennial session of the Supreme Lodge and until their successors are duly elected and installed.

At the third quadrennial meeting of the Supreme Lodge held April 15, 1938, the following were unanimously elected as officers of the Society for ensuing quadrennial period:

Name	Title
J. E. Justice	President
M. M. Longshore	Sec. Treasurer
J. J. Warren	Asst. Secretary

[fol. 115] At a meeting of the Board of Trustees held on December 2, 1939, the resignation of Mrs. M. M. Longshore as Secretary-Treasurer was tendered and accepted. At the same time J. J. Warren was elected Secretary and A. F. Whiting was elected Treasurer.

Board of Trustees

The Board of Trustees, which is the Executive Body of the Society, is composed of the President and the Secretary of the Society, and five Trustees duly elected by the Supreme Lodge at each regular quadrennial session and hold office until their successors are elected and qualified.

At the third quadrennial meeting of the Supreme Lodge held April 15, 1938, the following were unanimously elected members of the Board of Trustees:

R. D. Carlton	J. J. Warren
A. D. Merchant	S. H. Longshore
W. Guy Longshore	J. E. Justice
M. M. Longshore	

At the extraordinary meeting of the supreme lodge held January 15, 1940, the following were elected as trustees:

Joseph E. Justice	S. H. Longshore
J. J. Warren	R. D. Carlton
A. F. Whiting	A. D. Merchant
W. G. Longshore	

The Board of Trustees meets quarterly in the office of the President on the first or second Saturday of March, June, September and December at such hour as may be determined by the President or a majority vote of the Trustees.

[fol. 116]

Fidelity Bonds

The following officers and employees are bonded by schedule fidelity bond issued by a surety company licensed to transact business in the State of Alabama:

J. E. Justice, President	\$ 5,000.00
A. F. Whiting, Treasurer	25,000.00
S. H. Longshore, General Manager	25,000.00
J. J. Warren, Secretary	25,000.00
Eunice Stough, Cashier	2,000.00
Edeelene Tucker, Bookkeeper	2,000.00
48 other Cashiers and Organizers	
\$1,000.00 each	48,000.00

Total	\$132,000.00
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Organizers' Contracts and Commissions

Executed contracts for organizers were submitted and were carefully examined. These contracts provide for commissions on first year premiums ranging from 35% to 70%. The commission paid for Contingent Endowment contracts is 60% except for a few cases in which the commission is 40% and 50%. A 5% commission for ten years is provided for renewal premiums on all contracts except 5 and 10 Year Convertible Term, conditioned on the production of a minimum of \$100,000.00 per year. The organizers are required to furnish a fidelity bond in the sum of \$1,000.00.

Scope of Examination

The last regular departmental examination of this Society was made by representatives of the Alabama, Louis-

iana, Mississippi and Tennessee Insurance Departments as of December 31, 1936. A special examination was made by the Alabama, Mississippi and Tennessee Departments covering the period from January 1, 1937 to and including June [fol. 117] 30, 1939, and a preliminary report rendered thereon. This examination reviews the preliminary report, notes the measures taken by the Society to remedy the matters to which exception was taken therein, and completes the examination for the three year period ended December 31, 1939.

The following verifications and tests were made during the course of the examination:

1. Income from premiums or assessments was satisfactorily test checked for selected periods.

2. Income from investments and other sources was satisfactorily checked and verified for the period covered by this examination.

3. Cash disbursements were checked as to amount and satisfactorily as to allocation to expense and other accounts for selected periods.

4. General ledger entries were substantially test checked to books of original entry for selected periods in 1937 and 1938, and checked complete for the twelve months ending December 31, 1939.

5. Office copies of the annual statements filed with the State Insurance Departments for the years 1937, 1938 and 1939 were checked to the general ledger through ledger assets and found to be in agreement or reconcilable therewith.

6. All assets were verified and liabilities established by use of methods accepted as standard which are set forth more fully in comments following the financial statement.

7. A thorough inspection was made of all transactions of any importance occurring during the period covered by this examination.

The following financial statement shows the income and disbursements for the past three calendar years, and the assets, liabilities, and unassigned funds at the close of business on each respective year:

Financial Statement

At Close of Years as Indicated

	1937	1938	1939
Balance from Previous Year.....	\$578,073.95	\$714,412.46	\$883,284.53
Income:			
Membership Fees.....	9,185.00	8,815.00	10,471.00
First Year's Assessments or Premiums.....	79,071.26	67,129.86	78,712.33
Other Assessments or Premiums.....	365,153.17	379,942.11	388,155.84
Medical Examiners Fees.....	4,406.00	4,216.00	5,206.00
Total.....	457,815.43	460,102.97	482,545.17
Reinsurance Premiums Received.....	10,199.79	15,746.56	11,455.96
Total.....	468,015.22	475,849.53	494,001.13
Reinsurance Paid.....	1,352.34	2,986.07	5,310.45
Net Premiums Received.....	466,662.88	472,863.46	488,690.68
Interest on Mortgage Loans.....	3,071.29	3,915.12	4,757.14
Interest on Bonds less.....	15,106.67	24,317.53	25,551.25
Accrued interest on Bonds Purchased.....	252.34	277.26	237.49
Interest on Bank Deposits.....	152.05	161.64	265.67
Interest from other sources.....	6,000.00	6,000.00	6,900.00
Rent on Society's property.....	164.61	309.22	219.95
Profit Sale of Bonds.....	40.20	256.80	246.00
Dividends on Stocks.....			
Total Income.....	491,450.04	508,101.03	526,868.18
Total.....	\$1,009,523.99	\$1,222,513.49	\$1,410,152.71

[fol. 119]

Balance Brought Forward.....	\$1,069,523.99	\$1,222,513.49	\$1,410,152.71
Disbursements:			
Death Claims.....	45,094.75	33,750.00	32,973.64
Contingent Endowment Claims.....	39,000.00	32,000.00	33,000.00
Surrender Values.....	.....	635.08	.....
Adjusted Claims.....	1,136.55	1,169.76	1,310.00
Reinsured Claims.....	3,000.00	7,500.00	9,780.00
Total Benefits Paid.....	88,231.30	75,054.84	77,063.64
Less Reinsurance.....	.....	.....	4,889.00
Policy Loans Cancelled by Lapse.....	88,231.30	75,054.84	72,174.64
Commissions and Fees Paid Organizers, Officers and Trustees.....	131.62	.....	454.00
Salaries, Officers and Trustees, Except Commissions.....	117,131.47	99,210.05	111,307.36
Salaries Office Employees.....	23,380.00	24,650.00	23,906.66
Medical Examiners Fees and Inspections.....	20,784.80	21,600.96	21,266.11
Traveling and Other Expenses, Officers, Trustees and Com- mittees.....	6,147.08	6,187.68	6,629.25
Collection and Remittance Assessments and Dues.....	1,081.50	1,042.00	3,048.78
Insurance Department Fees and Expenses.....	9,649.77	523.32	482.10
Rent—Occupancy of our Building.....	3,080.42	317.50	3,497.20
General Office Maintenance and Expense.....	6,000.00	6,000.00	6,900.00
Advertising, Printing and Stationery.....	521.69	520.25	460.04
Postage, Express, Telegraph and Telephone.....	11,423.69	8,624.43	9,680.27
Lodge Organization Expense.....	6,356.13	6,311.33	6,693.26
Legal Expense in Litigating Claims.....	3,052.61	2,266.07	9,178.86
Other Legal Expenses.....	751.70	2,150.50	1,257.36
Furniture and Fixtures.....	2672.41	150.00	5,373.32
.....	.....	205.73	3,202.43

	1937	1938	1939
Taxes, Repairs, Etc., Real Estate.....	1,996.90	2,888.16	3,033.56
Lodge Meeting Expense.....	.....	649.39	2,134.40
Automobile Expense.....	.....	5,082.04	4,404.98
[fol. 120]			
Exchange.....	239.77	166.18	181.87
Organizers Balance Charged Off.....	12,275.48	10,066.62	10,258.14
Social Security Taxes, Etc.....	4,264.24	5,085.29	4,224.81
Miscellaneous Expense.....	2,288.45	1,972.30	1,654.69
Branch Office Expense.....	32,763.80	36,385.23	39,996.71
Other Taxes.....	.....	28.75	.....
Loss Sale of Bonds.....	58.70	154.85	47.50
Field Supervision and Traveling Expense.....	828.00	21,935.49	18,620.84
Decrease in Book Value of Real Estate.....	.....	.....	221.34
Furniture and Fixtures Charged Off.....	.....	.....	8,001.29
Total Disbursements.....	<u>\$355,111.53</u>	<u>\$339,228.96</u>	<u>\$378,231.99</u>
Balance.....	<u>\$714,412.46</u>	<u>\$883,284.53</u>	<u>\$1,031,920.72</u>
Ledger Assets:			
Book Value of Real Estate.....	\$45,000.00	\$45,000.00	\$67,500.00
Mortgage Loans on Real Estate—First Liens.....	52,386.40	76,972.39	123,053.31
Loans and Liens on Certificates of Members.....	1,413.00	2,010.00	3,300.47
Book Value of Bonds.....	490,533.36	603,632.09	667,938.45
Book Value of Stocks.....	2,125.00	4,885.00	4,885.00
Cash in Office.....	170.00	170.00	160.00

Deposits in Banks and Trust Companies

Not on Interest.....	34,273.91	96,770.61	110,626.71
On Interest.....	23,472.09	8,780.06	15,017.53
Premium Notes.....	9,986.38	10,575.85	12,526.60
Warrants.....	322.78	312.78	264.90
Organizers Balances, Net.....	21,362.87	21,527.64	21,581.84
Returned Checks.....	202.06	251.82	265.89
[fol. 121]			
Special Deposits.....	45.00	45.00	50.00
Automobiles.....	5,000.00	4,350.00	4,750.00
Furniture and Fixtures.....	7,914.61	8,001.29	
Bills Receivable.....	225.00		
Total Ledger Assets.....	<u>\$714,412.46</u>	<u>\$883,284.53</u>	<u>\$1,031,920.72</u>

Non-Ledger Assets:

Interest Accrued on Mortgages.....	1,070.62	1,320.19	1,902.25
Other Interest Due and Accrued.....		80.92	
Other Accrued on Bonds.....	4,947.84	3,302.00	3,408.62
Interest Accrued on Bank Deposits.....	209.68		94.98
Market Value Bonds over Book Value.....	25,997.43	40,241.30	50,112.19
Collections of Branch Offices Unreported.....		4,392.18	
Net Due and Deferred Premiums.....		8,405.42	6,144.70
Market Value Stocks over Book Value.....		35.00	855.00
Total Non-Ledger Assets.....	<u>\$32,225.57</u>	<u>\$57,777.01</u>	<u>\$62,517.74</u>
Gross Assets.....	<u>\$746,638.03</u>	<u>\$941,061.54</u>	<u>\$1,094,438.46</u>

Deduct Assets Not Admitted

	1937	1938	1939
Organizers Debit Balances.....	\$23,235.43	\$23,937.08	\$24,074.39
Warrants.....	322.78		204.90
Special Deposits.....	45.00	45.00	
Returned Checks.....	202.06	251.82	265.89
Automobiles.....	5,000.00	4,350.00	4,750.00
Furniture and Fixtures.....	7,914.61	8,001.29	
Decrease Book Value Mortgages.....			5,791.74
[fol. 122]			
Premium Notes and Policy Loans lapsed or in excess of Reserves.....	3,767.36	3,064.43	3,746.82
Bills Receivable.....	225.00		
Total Assets Not Admitted.....	\$40,712.24	\$39,649.62	\$38,833.74
Total Admitted Assets.....	\$705,925.79	\$901,411.92	\$1,055,604.72

Liabilities:

	1937	1938	1939
Death Claims.....	1,000.00	3,000.00	3,000.00
Contingent Endowment Claims.....	1,000.00	3,000.00	3,000.00
Death Claims Resisted.....			
Claims Adjusted.....			
Travel and Pedestrian Claim.....			1,100.00
Total Claims.....	2,000.00	6,000.00	7,100.00
Salaries, Rents, Accounts, Etc., due and accrued.....	2,872.30	2,516.60	1,827.22
Advance Assessment or Dues.....		6,038.49	4,330.02

Taxes Due or Accrued.....	181.95	106.25	1,447.75
Policy Reserves (American Experience 3½% F.P.T.).....	508,454.00	636,570.00	779,765.00
Total Liabilities.....	\$513,508.25	\$651,231.34	\$794,469.99
Unassigned Funds.....	192,417.54	250,180.58	261,134.73
Totals.....	\$705,925.79	\$901,411.92	\$1,055,604.72

[fol. 123] Comments on Financial Statement

Inasmuch as the annual statement filed with the Department for the years 1937 and 1938 were found to be in agreement or reconcilable with the Society's records, comment on these statements is not deemed necessary.

Comments pertaining to the financial statement for the year 1939 are confined to items and accounts which, in the opinion of your examiners, warrant explanation or analysis.

Income and Disbursements

The items found under the above caption are those usually found in a business of this kind, no unusual items being found.

The cash disbursements for the year 1939 were checked complete and found to be properly supported by cancelled checks or vouchers and were further tested by reference to statements and other supporting data in the Society's files, and the items were found to be valid obligations of the Society.

The books and records of the Society, while complete and accurate, are so maintained that information required by your examiners was not readily obtainable. In the interest of efficiency and economy in operation, a modern up-to-date system should be installed.

Real Estate \$67,500.00

This item comprises the home office of the Society located at 221 South Court Street in the City of Montgomery, Ala-
[fol. 124] bama. The realty is improved with a three story colonial type brick building to which has recently been added a two story brick annex with executive offices on the lower floor and an assembly hall on the second floor.

The lot on which the building is situated is approximately 125 feet wide and 140 feet deep, adjoining an inside lot on the rear approximately 150 feet by 72 feet. The property is in an excellent state of repair. It is within a few blocks of the downtown business district and is well located for its purpose.

The property was acquired in 1932 for the sum of \$40,000.00. At that time it was appraised by three real

estate agents at \$45,000.00 and was set up on the Society's books at that figure. The documents of title were examined.

During 1939 the sum of \$22,721.34 was expended in adding an addition to and otherwise improving the property. These expenditures were examined and found to be proper. The property is shown in this report at \$67,500.00, representing the appraised value at time of purchase and the improvements as above stated, less \$221.34 written off to reduce to even figures.

Insurance is carried on the building in the sum of \$29,500.00 and on the contents amounting to \$7,000.00.

The income from the property was \$6,900.00 for 1939, represented by the value assigned for home office use. A statement of the gross and net earnings of the property is afforded in the following statement:

[fol. 125].

	1937	1938	1939
Rental Value assigned to Home Office use...	\$6,000.00	\$6,000.00	\$6,900.00
Expenses: Insurance, repairs, and taxes...	1,996.90	2,578.16	2,961.56
Net Income	\$4,003.10	\$3,421.84	\$3,938.44
Mortgage Loans			\$123,053.31

This consists of thirty-three loans with the above book value classified as follows:

State	City		Farm and Timber Lands		Total	
	No.	Amount	No.	Amount	No.	Amount
Alabama.....	24	\$100,034.41	7	\$17,418.90	31	\$117,453.31
Florida.....	..	..	1	5,000.00	1	5,000.00
Mississippi.....	1	600.00	..	..	1	600.00
Totals.....	25	\$100,634.41	8	\$22,418.90	33	\$123,053.31

Two of the above loans (total \$7,000.00) are actually collateral loans with assigned mortgages attached, which are carried in Mortgage Loan Account.

With the exception of two loans (total \$1,118.90) all necessary supporting documents—appraisals, abstracts, attorney's opinion of title, the required amount of insurance payable to the Society, etc. were found in the files accompanying these mortgages.

Evidence of payment of taxes on the properties involved was not available but in view of the fact that none were in default as to principal or interest, this was not required by your examiners. The major amount of the mortgages are

on property in Montgomery County, Alabama, and their officers informed us that as to these, tax payments were verified.

[fol. 126] Accrued interest as of December 31, 1939 in the amount of \$1,902.25 is shown as a "Non-Ledger Asset."

Under "Assets Not Admitted" is included \$5,791.74, representing the amounts of two loans in excess of fifty per cent of appraised value submitted.

The following show the yield derived from the mortgages of the Society during the period covered by this examination:

1937	6.55%
1938	6.44%
1939	5.45%
3 years	6.01%

Book Value of Bonds \$667,938.45

The following is a summary showing a classification of the bonds owned by the Society:

Kind	Book Value	Par Value	Market Value
United States	\$75,058.74	\$74,700.00	\$79,560.01
Home Owners' Loan Corp.	7,041.88	7,000.00	7,041.88
Dominion of Canada	952.50	1,000.00	1,013.75
State	351,534.80	340,000.00	389,375.00
County and Municipal	212,525.53	208,000.00	220,135.00
Public Utility	4,825.00	5,000.00	4,925.00
Miscellaneous	16,000.00	16,000.00	16,000.00
Totals	\$667,938.45	\$651,700.00	\$718,050.64

All of the bonds were in a safety deposit box in the vaults of the Alabama National Bank of Montgomery, Ala-
[fol. 127] bama, where they were inspected by your examiners in the presence of the General Manager and Secretary, which officers are authorized to have access to the safety deposit box containing the securities of the Society.

With the exception of Bonds of the United States, practically all of the securities are obligations of the State of Alabama and its political subdivisions.

In view of the nature of this asset and the fact that many issues are not quoted in the valuations promulgated by the National Association of Insurance Commissioners for the purposes of this examination, your examiners have used valuations obtained from two reputable investment dealers

in the City of Montgomery, Alabama. This result in a market value over book value of \$50,112.19, which amount is included under "Non-Ledger Assets."

None of these bonds were in default as to principal or interest.

Accrued interest on December 31, 1939 was \$3,408.62 which is also shown under "Non-Ledger Assets."

The following shows the book value of bonds at the end of 1937, 1938 and 1939, the period covered by this examination.

Book Value December 31, 1937	\$490,533.36
Book Value December 31, 1938	603,632.09
Book Value December 31, 1939	667,938.45

The Book Value of its bonds represents also the purchase price, no adjustments having been made on account of change in value or by amortization.

[fol. 128] Yield on the average book value for the past three years is as follows:

1937	3.86%
1938	3.93%
1939	3.88%
3 years	3.90%

Book Value of Stocks \$4,885.00

Stocks owned by the Society at December 31, 1939 consist of 410 shares of common stock of the Alabama National Bank, Montgomery, Alabama, of a par value of \$10.00, and carried at a book value of \$4,885.00. Quotations received from reputable brokers, show a market value of \$14.00 per share, resulting in a market value over book value of \$855.00 which is admitted as a non-ledger asset. The stock has paid 6% dividends regularly since its acquisition.

Policy Loans \$3,300.47

This item represents loans made by the Society on its policies assigned as collateral and was reconciled in detail with the ledger control account as of December 31, 1939. Verification was accomplished by listing the loan agreements in force as of that date and checking against the individual ledger cards. Comparisons were made to premium ledger sheets and reserve tables to determine if the policies

were in force and the values therein were in excess of the amount loaned. Excesses amounting to \$284.52 are deducted as assets not admitted.

[fol. 129] The Society does not make a practice of collecting interest in advance on policy loans. For this reason, your examiners have not allowed any credit for accrued interest thereon.

Cash \$125,804.26

This item consists of the following:

Cash in office	\$160.00
Deposits in banks not on interest	110,626.71
Deposits in bank on interest	15,017.55
Total	\$125,804.26

On the \$160.00 shown as cash in the office, \$80.00 of this sum represents petty cash in the home office and was verified by actual count. The remaining \$80.00 represents cash advanced and charged to branch offices to be used as petty cash. As the cashiers in the branch offices are under bond this sum is amply secured and is admitted as a ledger asset.

The cash in banks was verified by certificates received from the depositories and reconciled with the Society's books. Of the total deposits in banks \$15,017.55 is represented by certificates of deposit and savings account books, bearing interest.

Accrued interest on bank deposits amounting to \$94.98 is admitted as a non-ledger asset.

Premium Notes \$12,526.60

The notes were examined and proved against the general ledger. The notes do not carry a policy lien on their face, but inasmuch as the policy forms contain a lien provision [fol. 130] for any indebtedness, we have admitted the amount of such notes as are supported by an adequate reserve, but have treated notes amounting to \$3,462.30 which are not supported by reserves as non-admitted assets.

Warrants \$264.90

Warrants in the principal amount as stated above are in the company's vault at the Home Office, and were inspected.

One of the warrants is an interest bearing obligation of Conecuh County, Alabama for \$60.00 with interest coupons attached, and is current as to both principal and interest. We are treating this item as an admitted asset.

The remaining items are school warrants issued by Mississippi counties and all are several years old. They bear no interest. We were informed by one of the officers of the company that these Counties have made no provision for their payment and that ultimate realization thereon is doubtful. We are therefore treating amount of \$204.90 as non-admitted assets.

Organizers' Balances—Net \$21,581.84

A trial balance of the organizers ledger disclosed gross debit balances of \$24,074.39 and credit balances of \$2,492.55, resulting in a net debit balance of \$21,581.84. Analysis of individual accounts disclosed the balances represent such items as advances to organizers secured by future commissions and net premiums charged to organizers. It was also noted that the Society sold automobiles, owned by it, to organizers, taking a note for the amount of the sale, which is charged to the individual in the or-[fol.131] ganizers ledger, special account.

During the year 1937 the Society charged off the sum of \$12,275.48, in 1938 the sum of \$10,066.62, and in 1939 the amount of \$10,258.14 of organizers' debit balances.

In accordance with the convention blank requirements, the gross debit balance of \$24,074.39 is deducted as assets not admitted.

Special Deposits \$50.00

This item represents cash with the Power and Light Company to secure the payment of the monthly bills and is deducted as assets not admitted.

Other Ledger Assets \$5,015.89

This item consists of the following:

Returned checks	\$ 265.89
Automobiles	4,750.00
Total	<u>\$5,015.89</u>

These items are deducted as assets not admitted.

Non-Ledger Assets

Net Premiums Due \$6,144.70

The net due premiums on business in force amounted to \$6,144.70, for which due credit has been given under "non-Ledger Assets."

Inasmuch as other non-ledger items have been commented on in connection with related ledger assets, further comment is not deemed necessary.

[fol. 132] Deduct Assets Not Admitted

All items of assets not admitted, having been commented on under other captions, further comment is not required.

Liabilities

Death Claims \$7,100.00

As of December 31, 1939 the Society had four unpaid death claims amounting to \$4,100.00. As three of the policies on which these claims were incurred were Contingent Endowment certificates, there was an additional liability of \$3,000.00 for the living members. The remaining claim was under a travel and pedestrian policy, originally for \$2,400.00, which was compromised for \$1,100.00.

Salaries, Rents, Expenses, Commissions, Etc.

Due or Accrued \$1,827.22

This liability is composed of all unpaid items of the nature indicated as of December 31, 1939. The amount of this liability was determined from all accounts due on December 31, 1939 and paid subsequent to that date as well as unpaid amounts which accrued to the Society prior to that date.

Advance Payments or Assessments \$4,330.02

The above payments or assessments at December 31, 1939 were scheduled and the total thereof found to be \$4,330.02, for which sum a liability is shown on the financial statement.

Taxes Due or Accrued \$1,447.75

This item represents the amount of property, Social Security and Unemployment Compensation taxes due or accrued as of December 31, 1939. The amount was verified by [fol. 133] reference to the subsequent payment of the tax.

Policy Reserves and Premiums Paid in Advance \$779,765.00

The Policy Reserves of the Society were computed by the Actuary for the Alabama Insurance Department, using statistical information furnished by the Society.

The certificates of the Society are valued on the American Experience Table of Mortality with interest assumption of $3\frac{1}{2}\%$, First Year Preliminary Term.

An extensive test check of the records in this connection was made by your examiners, which also covered the liability of premiums paid in advance. While some minor errors were disclosed, their approximate accuracy was established.

Approximately eighty per cent of the insurance written has been issued on a plan known as "Preferred Life Endowment." This plan provides for maturity of certificate as Contingent Endowment, or as an Old-Age Endowment which shall occur on the day the Assured attains the age of seventy years.

For the purpose of Contingent Endowment all certificates which participate therein are grouped in divisions of twenty-five according to the age of the insured at time of issue of certificate. The certificate holders of each division are numbered from one to twenty-five, inclusive. Number one is the certificate holder who has been in his division the longest period of time and who shall receive the Contingent Endowment at the time the Society experiences a mortality loss among its members under a Certificate in [fol. 134] force in the same class and division. In the event of the death of a member holding the number one position, number two receives the Contingent Endowment.

The Society maintains one class for each age from sixteen to fifty-five, inclusive, and each class may have twenty-five divisions. In the addition there are classes with a varying number of divisions with the prefix "F", originating from the business of the Federal Life Insurance Society which was taken over during the year 1932. The maximum number of members for any division is twenty-five.

As applications for Preferred Life Endowment plan are received they are stamped to record the day and hour, and the lowest position open in any division of the applicant's class or age group is then assigned to the applicant.

The certificates issued on the Preferred Life Endowment plan do not provide for a Cash Surrender or Loan Value. The majority of these certificates now issued provide for

automatic paid-up values after premiums for three full years have been paid. At the meeting of the Supreme Lodge held January 15, 1940, the Trustees were authorized to provide paid-up values and extended insurance for those certificates on the Preferred Life Endowment plan not theretofore having such provisions. These values are provided for all certificates now in force, effective May 1, 1940, and endorsements are now being attached by a field force specially designated to handle the matter.

The Society also issued the regular standard forms. The following is a summary of insurance in force by plans and by States:

[fol. 135]

By Plans	Amount
Preferred Life Endowment	\$9,839,000.00
Ordinary Life	202,750.00
Twenty Payment Life	110,250.00
Endowment at 85—C. P.	93,100.00
Endowment at 85—20 Pay	84,000.00
Miscellaneous Plans	192,000.00
One Year Renewable Term	1,622,000.00
Total	\$12,143,100.00

By State	Policies in Force	
Alabama	5,219	6,274,250.00
Georgia	1,314	1,413,750.00
Florida	70	73,500.00
Louisiana	1,388	1,774,500.00
Mississippi	855	901,000.00
South Carolina	1,393	1,459,000.00
Tennessee	191	247,100.00
Total	10,430	\$12,143,100.00

Unassigned Funds \$261,134.73

As shown in the foregoing financial statement, the unassigned funds of the Society on December 31, 1939 amounted to \$261,134.73, an increase of \$10,954.15 over that shown by the Society on December 31, 1938.

Underwriting

The maximum retention by the Society on one life is Five Thousand Dollars, the excess being reinsured.

Risks are accepted at ages 16 to 55.

Non-medical policies are written to age 40 on female lives and age 45 on male lives, if acceptable to its underwriter.

Double Indemnity risks are fully reinsured.

Practically all substandard risks are reinsured in full.

[fol. 136] An examination of numerous accepted and rejected applications was made, which indicate that sound methods are used by its underwriter and medical examiner. This is also reflected in the mortality experience of the Society.

Handling of Claims

Policy claims of the Society appear to have been paid promptly and fairly, no claims having been resisted or compromised without sufficient cause.

Reinsurance Written

This Society accepts total reinsurance on a portion of the risks written by First National Life Assurance Society of Atlanta, Georgia, a fraternal organization of similar nature. Practically all of this reinsurance covers risks on Contingent Endowment contracts in the amount of \$2,000.00, \$1,000.00 of which applies to the policyholder whose application is submitted for approval and \$1,000.00 to be paid to an unnamed living policyholder determined according to the terms of the policy contract, in the event of the death of the risk reinsured.

This reinsurance is written on the usual yearly term basis at the attained age, the amount of such reinsurance being reduced as the policy reserves accumulate.

It appears that it has been a profitable business, as shown by the following result of operations for the years 1937, 1938 and 1939:

Earned Premiums	\$36,707.52
Losses Incurred and Paid	12,780.00

[fol. 137]

Reinsurance Ceded

Under the terms of a reinsurance agreement with the Lincoln National Life Insurance Company of Fort Wayne,

Indiana, dated May 8th, 1936, the Society reinsures certain of its risks with that company.

This agreement contains the customary provisions as to yearly renewable term insurance at attained age, reduction of risk by amount of accumulated reserves, schedule of rates, etc.

The following shows the operation of this agreement during the period covered by this examination:

	Premiums Paid	Losses Covered
1937	\$1,352.34	None
1938	2,986.07	None
1939	5,310.45	4,889.00
	<hr/> 9,648.86	<hr/> 4,889.00

Premiums are paid on an annual basis, and approximately fifty per cent of premiums paid for 1939 were unearned as of December 31, 1939.

Compensation of Officers and Trustees

There is set out below a schedule of the salaries and commissions paid to officers and trustees for the past three years:

1937		
Name	Title	Amount
Joseph E. Justice	President and Trustee	\$15,074.31
M. M. Longshore	Secretary-Treasurer and Trustee	4,507.09
J. J. Warren	Assistant Secretary and Trustee	4,453.21
[fol. 138]		
S. H. Longshore	General Manager and Trustee	38,873.52
F. M. Phillippi	Actuary	4,130.00
A. D. Merchant	State Manager, La., and Trustee	11,061.10
	Total	<hr/> \$78,099.23 <hr/>

1938		
Joseph E. Justice	President and Trustee	\$15,000.00
M. M. Longshore	Secretary-Treasurer and Trustee	5,216.66
J. J. Warren	Assistant Secretary and Trustee	4,681.49
S. H. Longshore	General Manager and Trustee	39,359.03
F. M. Phillippi	Actuary	4,300.00
A. D. Merchant	State Manager, La., and Trustee	10,598.37
R. D. Carlton	Trustee and Clerk	650.00
	Total	<hr/> \$79,805.55 <hr/>

1939

Joseph E. Justice	President and Trustee	\$14,166.67
J. J. Warren	Secretary and Trustee	5,060.70
A. F. Whiting	Treasurer, Trustee and Attorney	1,200.00
M. M. Longshore	Secretary-Treasurer and Trustee until December 15, 1939	4,800.06
S. H. Longshore	General Manager and Trustee	41,809.53
R. D. Carlton	Trustee and Clerk	2,625.00
A. D. Merchant	State Manager, La., and Trustee	11,077.96
Total		<u>\$80,739.92</u>

On December 2, 1939, at a meeting of the Board of Trustees, the following changes were made in the personnel and compensation of the officers:

(a) The resignation of Mrs. M. M. Longshore as Secretary and Treasurer, was accepted, effective December 15, 1939, and her salary terminated as of December 1, 1939.

[fol. 139] (b) The salary of Joseph E. Justice as President was changed from \$15,000.00 per year to \$5,000.00 per year, effective December 1, 1939.

(c) The contract with S. H. Longshore, as General Manager, was modified effective December 1, 1939, in the following particulars:

1. The term was reduced from 25 years after March 1, 1929 to 15 years from that date, making it expire on March 1, 1944.

2. The stipulation therein providing that the commissions accruing under the contract shall be paid in the event of his death to his heirs or assigns was eliminated, so that in such event there shall not be payable to his heirs or assigns any amount that was not due and payable to him at death.

3. The provision specifying a commission of $7\frac{1}{2}\%$ on all second and subsequent years dues has been amended to provide for 5% on such dues.

As modified, the contract terminates on March 1, 1944, provides for a commission of 20% of all first year dues, 5% commission on subsequent years due- except from the State of Louisiana, and $2\frac{1}{2}\%$ of second and subsequent years dues from Louisiana.

Increase in Admitted Assets

The following tabulation shows the increase and decrease in admitted assets at December 31, 1936 and December 31, 1939:

	December 31, 1936	December 31, 1939	Increase	Decreased
Real Estate.....	\$45,000.00	\$67,500.00	\$22,500.00	
Mortgage Loans.....	43,579.64	119,163.82	75,584.18	
Collateral Loans.....	631.16			\$631.16
Policy Loans.....	1,011.00	3,015.95	2,004.95	
Premium Notes.....	4,350.70	9,064.30	4,713.60	
Bonds.....	381,375.18	721,459.26	340,084.08	
Stocks.....		5,740.00	5,740.00	
Cash in Office.....	160.00	160.00		
Cash in Banks.....	89,198.56	125,739.24	36,540.68	
[fol. 140]				
Unreported Branch Office Collections.....	4,524.77			4,524.77
Agents' Credit Bal- ances.....	-2,877.20	-2,492.55		-384.65
Special Deposits.....		50.00	50.00	
Net Premiums due and Uncollected.....		6,144.70	6,144.70	
Warrants.....		60.00	60.00	
Totals.....	566,953.81	1,055,604.72	493,422.19	4,771.28
Net Increase.....	488,650.91			488,650.91
	<u>1,055,604.72</u>	<u>1,055,604.72</u>	<u>493,422.19</u>	<u>493,422.19</u>

General Comments

The investments of the Society have been carefully selected. With the exception of its home office building practically all assets are of a liquid nature, and none of its bonds or mortgages are delinquent as to principal or interest. The policy reserves are based upon an interest rate of $3\frac{1}{2}\%$. At the yield now being realized the income from its bonds and mortgages, without taking into consideration other investment income, produces 4% of the present policy reserves.

Insurance in force, including reinsurance, at December 31, 1939 amounted to \$12,143,100.00, which represents an increase since December 31, 1936 of \$727,947.00.

Surplus shows an increase from \$171,876.47 on December 31, 1936 to \$261,134.73 at December 31, 1939, being a net increase of \$89,258.26.

[fol. 141]

Conclusion.

Your examiners take this occasion to acknowledge the courtesies extended and assistance rendered by the officers

and employees of the Society during the course of the examination.

All of which is

Respectfully submitted. (S.) J. J. Scarborough, Jr.,
Examiner Representing Alabama Insurance Department; John W. Sparkman, Examiner Representing Mississippi Insurance Department.

[fol. 142] EXHIBIT "B"—To Defendant's Answers to Plaintiff's Interrogatories

Columbia Lodge No. 36—Columbia, S. C.

Mr. R. O. Darby, Eminent Commander (Organizer), 19 Arcade Bldg., Columbia, S. C.

Miss Rosalie Brogdon, Eminent Recorder, 19 Arcade Bldg., Columbia, S. C.

Mr. Ben. Lee Swygert, Eminent Warden, 1017 Bull St., Columbia, S. C.

Mr. Laurie R. Mellichamp, Eminent Guard, 1331 Pickens St., Columbia, S. C.

Rev. Harry E. Alban, Eminent Chaplain, RFD 3, Columbia, S. C.

Mr. Walter W. Rivers, Eminent Master, c/o Providence Hospital, Columbia, S. C.

Mr. Thomas C. Simmons, Eminent Treasurer, c/o Electrolux Corp., 62 Arcade Bldg., Columbia, S. C.

Miss Vonnice E. Lance, Eminent Sentry, 1301 Hampton Ave., Columbia, S. C.

[fol. 143] Florence Lodge No. 37—Florence, S. C.

Mr. Miles H. Anderson, Eminent Commander, Florence County, Florence, S. C.

Mrs. Ted Coleman, Eminent Recorder, 517-B So. Dargan St., Florence, S. C.

Mrs. Ben Cowell, Eminent Treasurer, Florence, S. C. Box #52.

Mrs. Ida M. Whitton, Eminent Chaplain, 117 W. Elm, Florence, S. C.

Mr. Sam Matthews, Eminent Sentry, Rt. 3, Florence, S. C.

Mr. Charles Haselden, Eminent Warden, S. C. National Bank, Florence, S. C.

Mr. G. Badger Baker, Eminent Master, Box 1162, Florence, S. C.

Mr. A. T. Willeford, Eminent Guard, 143 S. Dargan St., Florence, S. C.

[fol. 144] Greenville Lodge No. 38—Greenville, S. C.

Miss Helen Chandler, Eminent Commander, 28 Conestee, Greenville, S. C.

Mrs. L. D. Goddard, Eminent Recorder, 505 Arlington Ave., Greenville, S. C.

Mr. James Edwards, Eminent Chaplain, P. O. Box 1381, Greenville, S. C.

Mr. T. P. Young, Eminent Master, 217 Grove Rd., Greenville, S. C.

Mr. Eugene E. Stone, Eminent Sentry, Stone Mfg. Co., Greenville, S. C.

Mr. James W. Goddard, Jr., Eminent Warden, 505 Arlington Ave., Greenville, S. C.

Mr. R. G. Griffin, Eminent Treasurer (Organizer), P. O. Box 1194, Greenville, S. C.

[fol. 145] Anderson Lodge No. 40—Anderson, S. C.

Miss Lucille Acker, Eminent Commander, 310 E. Hampton St., Anderson, S. C.

Mrs. Essie Moor, Eminent Chaplain, P. O. Box 452, Anderson, S. C.

Mr. Ernest W. Bridwell, Eminent Master, Aiken Stores, Anderson, S. C.

Mr. Richmond P. Browne, Eminent Sentry, 711 North Ave., Anderson, S. C.

Mrs. Lorena C. Gilmer, Eminent Guard, 535 N. McDuffie St., Anderson, S. C.

Mr. Billy Bowen Parks, Eminent Warden, P. O. Box 143, 318 Evans St., Anderson, S. C.

Mrs. Elizabeth Browne, Eminent Recorder, 711 North Ave., Anderson, S. C.

[fol. 146] Aiken Lodge No. 39—Aiken, S. C.

Mr. David J. Wardlaw, Eminent Commander, 1030 Newberry St., Aiken, S. C.

Mrs. Wilhemina H. Moody, Eminent Recorder, 1029 Chesterfield St., Aiken, S. C.

Miss Elizabeth Thompson, Eminent Treasurer, 2405 Richland Ave., Aiken, S. C.

Mrs. Ella Eidson, Eminent Chaplain, Bath, S. C.

Mr. Cecil H. Seigler, Jr., Eminent Sentry, Rt. W, Trenton, S. C.

Mrs. Rena D. Howard, Eminent Master, Immaculate Koolin Co., Langley, S. C.

Mr. Jos. B. Howard, % Immaculate Koolin Co., Langley, S. C.

Mrs. Myrtle G. Corbett, Eminent Warden, Wagener, S. C.

[fol. 147] Birmingham Lodge No. 2—Birmingham, Ala.

Mr. Howard S. Shirley, Eminent Commander (Organizer), 906 Jackson Bldg., Birmingham, Ala.

Mr. L. L. Wheeler, Eminent Master, 1312 North 17th St., Birmingham, Ala.

Mr. F. R. Fisher, Eminent Guard (Organizer), 1752 McMillan Ave., Birmingham, Ala.

E. T. Walrond, Eminent Chaplain (Organizer), 608 S. W. 19th St., Birmingham, Ala.

Mr. F. W. Sawyer, Eminent Warden (Organizer), 906 Jackson Bldg., Birmingham, Ala.

Mr. J. J. Naff, Eminent Sentry (Organizer), 1628 North 29th St., Birmingham, Ala.

Mrs. Claire Ford, Eminent Recorder, 906 Jackson Bldg., Birmingham, Ala.

Miss Ethel J. Waldron, Eminent Treasurer, 4300 Cadsden St., Birmingham, Ala.

[fol. 148] Gadsden Lodge No. 41—Gadsden, Ala.

Mr. Eugene C. Miller, Eminent Commander, P. O. Box 485, Gadsden, Ala.

Mr. Irby Daniel, Eminent Warden, 430 Reynolds St., Gadsden, Ala.

Miss Louise Wharton, Eminent Guard, 905 S. 11th St., Gadsden, Ala.

Miss Vera Weir, Eminent Sentry, 515 S. 4th St., Gadsden, Ala.

Mrs. Geo. W. Philips, Eminent Chaplain, Gadsden, Ala.

Mr. James M. Christopher, Eminent Master, 1236 S. 10th St., Gadsden, Ala.

Mrs. Patricia G. Williamson, Eminent Recorder (Organizer), Printup Hotel, Gadsden, Ala.

Mrs. Patricia G. Williamson, Eminent Treasurer (Organizer), Printup Hotel, Gadsden, Ala.

[fol. 149] Montgomery Lodge No. 1—Montgomery, Ala.

Mr. J. F. Wilburn, Eminent Commander (Organizer), 201 Wellington Rd., Montgomery, Ala.

Mr. R. D. Carlton, Eminent Chapl-in, 107 Cramer Ave., Montgomery, Ala.

Mr. James Guy Carlton, Eminent Guard, 107 Cramer Ave., Montgomery, Ala.

Miss Edeelene Tucker, Eminent Recorder, 1118 Mt. Meigs Rd., Montgomery, Ala.

Mr. Thaddeus O. Walker, Eminent Master, 312 Molton St., Montgomery, Ala.

Miss Edith Lide, Eminent Warden, 202 Sanford St., Montgomery, Ala.

[fol. 150] Mobile Lodge No. 3—Mobile, Ala.

Mr. C. G. Bahlman, Eminent Commander, G. M. & N. R. R. Shops, Mobile, Ala.

Mr. G. E. Webb, Eminent Chaplain, 8 St. Emanuel St., Mobile, Ala.

Mr. J. G. Goodman, Eminent Recorder (Organizer), 703 First Natl. Bank Annex, Mobile, Ala.

Mrs. Fannie B. Washichek, Eminent Treasurer, 204 Dexter Ave., Mobile, Ala.

Mr. Homer L. Baldwin, Eminent Guard, 1706 Dauphin St., Mobile, Ala.

Mrs. Bessie B. Brown, Eminent Sentry, 501 Dauphine St., Mobile, Ala.

Mrs. Grace A. Haas, Eminent Guard, 2255 Old Government St., Mobile, Ala.

[fol. 151] Dothan Lodge No. 4—Dothan, Ala.

Mr. John W. Rish, Eminent Commander, P. O. Box 37, Dothan, Ala.

Mr. Emmet S. Thigpen, Eminent Recorder (Organizer), Cherry Bldg., Dothan, Ala.

Mrs. Lonie M. Chapman, Eminent Treasurer, 216 W. Main St., Dothan, Ala.

Mr. C. I. Adkison, Eminent Chaplain (Organizer), 409 S. Oates St., Dothan, Ala.

Mr. John Tryon Hubbard, Eminent Master, 307 W. Main St., Dothan, Ala.

Mr. John Lewis Harris, Eminent Guard, 206 W. Main St., Dothan, Ala.

Mr. Humphrey K. Parker, Eminent Warden, P. O. Box 247, Dothan, Ala.

[fol. 152] Decatur Lodge No. 5—Decatur, Ala.

Mr. Fred O. Smith, Eminent Commander, P. O. Box 83, Decatur, Ala.

Mr. Geo. M. Rogers, Eminent Master, Athens, Ala.

Mrs. Freda S. Trimble, Eminent Recorder, 901 Oak St., Decatur, Ala.

Mr. Nicholas R. Nichols, Jr., Eminent Chaplain, Athens, Ala.

Mrs. Susie E. Rains, Eminent Warden, c/o Lyons Hotel, Decatur, Ala.

Mr. Neal Speake, Eminent Sentry, Decatur Iron & Steel Co., Decatur, Ala.

[fol. 153] Macon Lodge No. 18—Macon, Ga.

Mr. L. M. Houser, Eminent Commander (Organizer), Rt. 1, Midland, Ga.

Mrs. Glenn Wilson, Eminent Recorder, c/o Mr. L. M. Houser, Rt. 1, Midland, Ga.

Mrs. Glenn Wilson, Eminent Treasurer, c/o Mr. L. M. Houser, Rt. 1, Midland, Ga.

Mr. L. M. Houser, Eminent Chaplain (Organizer), Rt. 1, Midland, Ga.

Mr. J. T. Smith, Eminent Guard, 623 Main St., Macon, Ga.

Mr. J. B. Howard, Eminent Sentry, 136 Charles St., Macon, Ga.

Mrs. J. T. Smith (Mrs Lilly M. C. Smith), Eminent Master, 623 Main St., Macon, Ga.

Mr. W. Y. Fleming, Eminent Warden (Organizer), Columbus, Ga.

[fol. 154] Atlanta Lodge No. 17—Atlanta, Ga.

Mr. R. P. Coleman, Eminent Commander, P. O. Box 1711, Atlanta, Ga.

Mr. C. L. Wharton, Eminent Chaplain (Organizer), 918 Cit. & Sou. Natl. Bank, Atlanta, Ga.

Mrs. Louise Taylor, Eminent Recorder, 918 Cit. & Sou. Natl. Bank, Atlanta, Ga.

Mr. W. G. Longshore, Eminent Guard, P. O. Box 1711, Atlanta, Ga.

Miss Margaret L. Longshore, Eminent Sentry, 1031 Lanier Blvd., Atlanta, Ga.

Mr. W. S. Carlton, Eminent Warden (Organizer), 918 Citizens & Sou. Natl. Bank, Atlanta, Ga.

Mr. W. R. Bell, Eminent Master, 839 Park Sta., S. W., Atlanta, Ga.

Miss Louise Taylor, Eminent Treasurer, 918 Cit. & Sou. Natl. Bank, Atlanta, Ga.

[fol. 155] Albany Lodge No. 14—Albany, Ga.

Mr. Price A. Westbrook, Eminent Commander, c/o Police Dept., Albany, Ga.

Mr. Lulette Westbrook, Eminent Chaplain, 500 E. Broad St., Albany, Ga.

Mrs. Edith Rawls, Eminent Recorder, 217½ Tift Ave., Albany, Ga.

Mrs. W. W. Green (Mrs. Margaret R. Green), Eminent Guard, 507 Flint Ave., Albany, Ga.

Mr. Edward D. Hope, Eminent Sentry, 408 Pine St., Albany, Ga.

Mr. J. E. Mobley, Eminent Warden, 622 Fifth St., Yoddie Drive, Albany, Ga.

Mr. Meyer Rosenberg, Eminent Master, c/o J. A. Rosenberg & Co., Albany, Ga.

[fol. 156] Athens Lodge No. 21—Athens, Ga.

Mr. L. E. Hopper, Eminent Master, 895 Hill St., Athens, Ga.

Mr. H. C. Doolittle, Eminent Sentry, P. O. Box 937, Athens, Ga.

Mrs. Hoyt Robertson, Eminent Chaplain, Box 418, Athens, Ga.

Mr. J. B. Tanner, Eminent Guard, 1738 S. Lumpkin St., Athens, Ga.

Mr. H. B. Ritchie, Eminent Treasurer, 226 King Ave., Athens, Ga.

Mr. B. E. Lumpkin, Eminent Recorder, 150 Coverhurst Ave., Athens, Ga.

[fol. 157] New Orleans Lodge No. 29—New Orleans, La.

Mr. Pat Kirkpatrick, Eminent Commander (Organizer), Jung Hotel, New Orleans, La.

Mr. Ben. F. Hay, Eminent Master, 708 Royal St., New Orleans, La.

Mrs. Alma Kirkpatrick, Eminent Recorder (Organizer), Jung Hotel, New Orleans, La.

Miss Catherine Clem, Eminent Sentry, 5933 Freret St., New Orleans, La.

Dr. Mabel Bowman, Eminent Chaplain, Maison Blanche Bldg., New Orleans, La.

Mrs. Lucy Hay, Eminent Warden, 536 St. Peter St., New Orleans, La.

Mr. Sidney Bowman, Eminent Guard, 1230 Maison Blanche Bldg., New Orleans, La.

[fol. 158] Baton Rouge No. 27—Baton Rouge, La.

Mr. J. R. Miller, Eminent Commander, Norwood, La.

Mr. Normand H. Edwards, Eminent Chaplain, 1956 Cherokee St., Baton Rouge, La.

Dr. Vernon Beam, Eminent Master, P. O. Box 1351, Baton Rouge, La.

Mrs. Mildred R. Hensley, Eminent Guard, State Dept. of Ed., Baton Rouge, La.

Mr. Henry T. Morgan, Eminent Warden, 1965 Hiawatha St., Baton Rouge, La.

Mr. Henry C. Deming, Eminent Sentry, R. F. D. 1, Baton Rouge, La.

—Miss Emily Grant, Eminent Recorder, 1203 La. Natl. Bank Bldg., Baton Rouge, La.

[fol. 159] Meridian Lodge No. 32—Meridian, Miss.

Mr. Isadore Love, Eminent Commander, 2710 10th St., Meridian, Miss.

Miss Eva L. Harrington, Eminent Chaplain, 2016 44th Ave., Meridian, Miss.

Mr. J. B. Peavey, Eminent Master, 1221 15th Ave., Meridian, Miss.

Mrs. T. L. Sullivan, Eminent Recorder, P. O. Box 423, Meridian, Miss.

Miss L. M. Sheppard, Eminent Warden, Box 791, East Miss. State Hospital, Meridian, Miss.

Miss Gipsie E. Barron, Eminent Guard, 1301 16th Ave., Meridian, Miss.

Miss Nannie B. David, Eminent Sentry, 517 B. St., Meridian, Miss.

[fol. 160] Jackson Lodge No. 33—Jackson, Miss.

Mr. Neil Browning, Eminent Commander (Organizer), 803 Deposit Guaranty Bank Bldg., Jackson, Miss.

Mrs. Geneva Walker, Eminent Recorder, 803 Deposit Guaranty Bank Bldg., Jackson, Miss.

Dr. T. M. Moore, Eminent Master, 210 Lampton Bldg., Jackson, Miss.

Miss Margaret Adams, Eminent Warden, Box 2435 Pearl St., Jackson, Miss.

Mr. E. B. Walker, Eminent Chaplain, 803 Deposit Guaranty Bank Bldg., Jackson, Miss.

Dr. H. J. Burnham, Eminent Guard, Standard Life Bldg., Jackson, Miss.

Miss Winnifred Germany, Eminent Sentry, Winnie's Hat Shop, Jackson, Miss.

[fol. 161] Columbus Lodge No. 34—Columbus, Miss.

Mrs. Eva Devane, Eminent Commander, Devane Motor Co., Columbus, Miss.

Mrs. Georgia B. Vail, Eminent Recorder, Columbus, Miss.

Mr. M. E. Shackleford, Eminent Treasurer, Shackleford Bus Mch. Wks., Columbus, Miss.

Mrs. T. M. Smith, Eminent Chaplain, Columbus, Miss.

Mr. T. B. Gideon, Eminent Sentry, c/o Coca Cola Bottling Co., West Point, Miss.

Mrs. W. F. Backstrom (Mrs. Lillie P. Backstrom), Eminent Master, Columbus, Miss.

Mrs. Lewis Beard, Eminent Guard, Columbus, Miss.

Miss Laudice Pratt, Eminent Warden, Columbus, Miss.

[fol. 162] Hattiesburg Lodge No. 35—Hattiesburg, Miss.

Mr. Edgar E. Deen, Eminent Commander, Court House, Hattiesburg, Miss.

Miss Kate L. Lord, Eminent Recorder, Box 77, Hattiesburg, Miss.

Miss Berniece Black, Eminent Master, Petal, Miss.
 Mrs. H. O. Moore, Eminent Chapl-in, Hattiesburg, Miss.
 Miss Gertrude Bounds, Eminent Guard, 416 Williams St.,
 Hattiesburg, Miss.

Mrs. M. Foster, Eminent Sentry, 414 West 4th St., Hattiesburg, Miss.

Mrs. Margaret Gresham, Eminent Warden, 614 Bay St., Hattiesburg, Miss.

[fol. 163] EXHIBIT "C"—TO DEFENDANT'S ANSWERS TO
 PLAINTIFF'S INTERROGATORIES

Preferred Life Assurance Society—Organizers

February 11, 1941

Name	State
C. I. Adkison	Alabama
J. C. Ard	Alabama
J. H. Beall	Alabama
W. J. Bibby	Alabama
James Guy Carlton	Alabama
A. E. Cauley	Alabama
Eugene C. Cooner	Alabama
George W. Crane	Alabama
Fred R. Fisher	Alabama
Pat L. Burton	Alabama
W. Y. Fleming	Alabama
Mrs. Claire Ford	Alabama
Charles D. Gibbs	Alabama
J. G. Goodman	Alabama
Mrs. Mary V. Goodman	Alabama
F. M. Griffin	Alabama
E. G. Hagood	Alabama
J. W. Henley	Alabama
W. Z. Hodges	Alabama
Solon Jacobs	Alabama
Ed R. Justice	Alabama
R. K. Kay	Alabama
H. A. Longshore	Alabama
J. A. Longshore	Alabama

[fol. 164]

Name	State
George M. McCreight	Alabama
C. G. McKinley	Alabama
V. V. Metcalfe	Alabama
J. L. Miller	Alabama
C. T. Morgan	Alabama
J. J. Naff	Alabama
E. E. Pettus	Alabama
Sam M. Phelps	Alabama
Ed H. Pizer	Alabama
I. F. Rainer	Alabama
C. C. Richardson	Alabama
A. H. Riley	Alabama
Mrs. L. A. Weatherford Russell	Alabama
Fred W. Sawyer	Alabama
Howard S. Shirley	Alabama
Emmet Scott Thigpen	Alabama
E. T. Walrond	Alabama
J. F. Wilburn	Alabama
Mrs. Patricia C. Williamson	Alabama
E. F. Yeilding	Alabama

[fol. 165]

Name	State
John A. Creps	Florida
Wm. F. Barnes	Georgia
W. S. Carlton	Georgia
Mrs. Lillie F. Downey	Georgia
E. B. Heyward	Georgia
L. M. Houser	Georgia
Mrs. Willimore T. Jones	Georgia
Mrs. Pattie W. Lawrence	Georgia
R. D. McDowell	Georgia
T. W. Morrison	Georgia
H. P. Thorn	Georgia
A. C. Tucker	Georgia
R. W. Waters	Georgia
C. L. Wharton	Georgia
L. A. Winn	Georgia

Mrs. Alma G. Kirkpatrick

Louisiana

Name	State
Pat Kirkpatrick	Louisiana
A. D. Merchant	Louisiana
J. R. Miller	Louisiana
W. R. Phillips	Louisiana
E. W. Wilkerson, Jr.	Louisiana
Miss Emily Grant	Louisiana

[fol. 166]

Name	State
Neil Browning	Mississippi
W. C. Thornton	Mississippi
Carlos Trigg	Mississippi
Mrs. Geneva C. Walker	Mississippi
Mrs. Alma M. Bair	South Carolina
Mrs. Anna S. Barre	South Carolina
Miss Rosalie Brogdon	South Carolina
Mrs. Ted Coleman	South Carolina
J. H. Cook	South Carolina
Roy O. Darby	South Carolina
R. G. Griffin	South Carolina
J. T. Giles	South Carolina
Mrs. D. D. Jones	South Carolina
J. K. Nettles	South Carolina
Morgan D. Walker	South Carolina

[fol. 167] IN UNITED STATES DISTRICT COURT

Amended Complaint—Filed March 4, 1941

Plaintiff above named, complaining of defendants above named, alleges in this his amended complaint:

1. Plaintiff is a citizen and resident of the State of South Carolina and defendant Preferred Life Assurance Society of Montgomery, Alabama, is a corporation organized under the fraternal benefit statutes of the State of Alabama and having its principal place of business at Montgomery in the Middle District of Alabama and doing business in the States of Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina and Tennessee.

2. Defendants Joseph E. Justice, Spencer H. Longshore, W. Guy Longshore, J. J. Warren, R. D. Carlton, A. D. Merchant, and A. F. Whiting are the officers, directors, trustees, and managing agents of defendant Society, and constitute the entire membership of said Society's Board of Directors or Trustees, and as such have the custody, control, and management of the assets of said Society, and are all over the age of 21 years, and reside within the Middle District of Alabama, except W. Guy Longshore who resides at Atlanta.

[fol. 168] 3. The respective offices now and formerly held by said defendants are as follows:

a. Joseph E. Justice is President and a Director and Trustee of said Society, and has been President, Director and Trustee since April 26, 1930.

b. Spencer H. Longshore is General Manager and a Director and Trustee of said Society. He has been General Manager since the Society's organization in August, 1928 and a Director and Trustee since April 26, 1930. As General Manager he holds an overwriting contract with said Society, which was entered into at or shortly after the organization of the Society and was modified in January 1940.

c. W. Guy Longshore is a Director and Trustee of said Society. He has been a Director and Trustee since the Society's organization. He was a ticket agent of Louisville & Nashville, Railroad until August, 1934; from August, 1934 until July 1936 was an "organizer" or selling agent of the defendant Society; and since July, 1936 has been General Manager of First National Life Assurance Society of Atlanta, Georgia, a fraternal benefit society of the State of Georgia. He is a brother of defendant Spencer H. Longshore.

d. J. J. Warren is Secretary and a Director and Trustee of defendant Society. He has been a Director and Trustee since April 26, 1930; from April 26, 1930 until December 15, 1939 was Bookkeeper and Assistant Secretary of said Society; and has been the Society's Secretary since December 15, 1939.

e. R. D. Carlton is a clerk and a Director and Trustee of defendant Society. He has been a Director and Trustee since April 26, 1930; and has been at various times from

April 26, 1930 to the present time manager of the delivery department of Montgomery Fair of Montgomery, Alabama, a clerk of Dixie Office Supply Company of Montgomery, Alabama, and a clerk of defendant Society.

f. A. D. Merchant is an "organizer" or selling agent and a Director and Trustee of defendant Society, and has been a Director, and Trustee since April 26, 1930, and has been an organizer at least since April 26, 1930.

g. A. F. Whiting is Attorney and Treasurer and a Director and Trustee of defendant Society. He has been Treasurer, Director, and Trustee since December 15, 1939.

4. Defendant M. M. Longshore was Secretary and Treasurer, and a Director and Trustee, of defendant Society from its organization until December 15, 1939. She is over the age of 21 years, resides in the Middle District of Alabama, and is the wife of the defendant Spencer H. Longshore.

[fol. 169] 5. Defendant B. Cosby Bird is Medical Director of defendant Society, and has been Medical Examiner and Medical Director from the Society's organization to the present time. He is over the age of 21 years and resides in the Middle District of Alabama.

6. Defendant F. M. Phillippi was actuary for defendant Society from some time in 1935 until some time in 1939, and for First National Life Assurance Society of Atlanta, Georgia, hereinabove mentioned, from its organization in July 1936 until some time in 1939, and is over the age of 21 years. On information and belief he is no longer connected with either Society, but still resides in the Middle District of Alabama.

7. On information and belief the respective degrees of guilt of the personal defendants as to the various frauds hereinafter set forth are substantially as follows:

a. Joseph E. Justice, Spencer H. Longshore, M. M. Longshore, and W. Guy Longshore conceived, put into operation, and actively participated and still participate in all the said frauds, and were and are the principal beneficiaries of the same.

b. J. J. Warren, R. D. Carlton, A. D. Merchant, and F. M. Phillippi knew and know of said frauds and have made no effort to stop the same, but were and are largely inactive

in the Society's management and operation and under the domination and control of defendants Joseph E. Justice, Spencer H. Longshore, M. M. Longshore, and W. Guy Longshore.

c. A. F. Whiting and B. Cosby Bird have taken no active or conscious part in any of said frauds, and have taken no part in the Society's management and operation.

8. This action is brought to re-organize the insurance department of defendant Preferred Life Assurance Society, and to displace its present officers and directors and trustees, and for damages; the insurance assets of Preferred Life Assurance Society exceed One Million (\$1,000,000.00) Dollars; and the amount in controversy exceeds Three Thousand (\$3,000.00) Dollars, exclusive of interest and costs.

[fol. 170] 9. Defendants write a form of insurance known as "Contingent Endowment" insurance, whose operation is substantially as follows:

a. By its terms all members of the Society are supposed to be divided into groups, called "divisions", each consisting of twenty-five (25) members of the same entry age; in each division each member is given a position numbered from one (1) to twenty-five (25); when a death occurs in any division the dead member's beneficiary receives the face amount of the dead member's insurance as a death claim, and the living member in good standing in the same division who holds the lowest position collects the face amount of his own insurance as a living claim, and his certificate is forthwith cancelled.

b. By reason of this contingency of collecting the face amount of insurance while still alive and after no fixed period of time, this form of insurance is very popular, and commands premiums much higher than ordinary "whole life" insurance.

c. From the standpoint of the probability of collecting the insurance while still alive, the essence of the contract is, that there be at all times twenty-five (25) members in each division.

d. Defendant Society by its contract binds itself to at all times keep and maintain each division at a strength of twenty-five (25) members.

10. Heretofore, on or about November 10, 1934, an agent of defendants solicited plaintiff to apply for a certificate of contingent endowment insurance issued by defendant Society under the following circumstances:

a. Said agent represented to plaintiff that: (1) plaintiff would have the number Five (5) position in his division; (2) plaintiff would "collect in two years easy"; (3) "we will fill this group before we start another one"; (4) there would be twenty-five (25) members in plaintiff's division.

b. Said agent further, in effect, represented to plaintiff that plaintiff's division would be completely filled before any memberships were sold in any other divisions of plaintiff's age class.

c. As hereinafter more fully set forth, all of these representations, except as to the position offered plaintiff, were false, and were known to be false when made and uttered with a reckless disregard for the truth.

d. Plaintiff reasonably believed these representations to be true, and relied upon them, and had a right to rely upon them.

e. In reliance on the said false and fraudulent representations, and at the urgent solicitation of defendants' agent, plaintiff applied to defendant Society for a certificate of [fol. 171] contingent endowment insurance.

f. Plaintiff would not have applied for such certificate except for such false representations.

11. Upon plaintiff's said application defendants issued to plaintiff, and sent to him through the United States mails, contingent endowment insurance certificate Number 18,497, Class (Age) 23, Division F(c), Position, Number 5.

12. Plaintiff accepted his said certificate and paid premiums thereon up to January, 1940 in the reasonable belief that there were at all times twenty-five (25) members in his said division.

13. In January 1940, plaintiff learned that there were only 10 members in his division, however, thru a monthly notice about 2 or 3 years before 1940 he learned that he had moved from position #5 to position #4.

14. Defendants have never had 25 members in any division, and have never sold a position number higher than number 11.

15. Defendants have no reasonable expectation of ever filling any division, and on information and belief have never had any intention of so doing, in that:

a. Defendants opened a total of 1456 divisions, and still have 1454 divisions open.

b. All the said divisions were opened prior to July 30, 1931, and long before defendants solicited plaintiff to apply for insurance.

c. The said 1454 divisions are sufficient to care for 36,350 members.

d. As of December 31, 1940 defendant Society had only 10,241 members.

[fol. 172] e. At no time has defendant Society ever had as many as 11,000 members.

f. On information and belief defendants have nevertheless continued to solicit business, and to accept premiums through the United States mails, upon the representations that divisions contained 25 members and were continuously kept and maintained at 25 members.

16. Defendants have made no effort to fill plaintiff's division before selling insurance in other divisions at plaintiff's entry age, nor have made any effort to fill plaintiff's division before selling insurance in other divisions at plaintiff's entry age.

17. By reason of defendants' breach of their contract with plaintiff he has been greatly damaged in his opportunity to collect on his certificate while he is still alive, in that according to the American Experience Table of Mortality plaintiff's certificate will take many years longer to mature with ten members in his division than if there were twenty-five members.

18. On information and belief: defendants have long since ceased to make any genuine effort to fill plaintiff's division, or any division, in that:

a. Defendants, and especially defendant W. Guy Longshore, have organized another insurance company in 1936,

known as "First National Assurance Society of Atlanta, Georgia", which writes and issues contingent endowment insurance in competition with defendant, Preferred Life Assurance Society, although W. Guy Longshore continued as a Trustee of Preferred Society.

b. Defendant W. Guy Longshore is General Manager of said First National Life Assurance Society, and has the benefit of an overwriting contract with said Society.

c. Said First National Assurance Society has a policy list of defendant Preferred Society.

d. Said First National Society, by the use of such policy list, has sold in the State of Alabama by mail, and contrary to the laws of said State, more than \$500,000 of contingent insurance.

e. Said First National Society is enabled to obtain more business by reason of being able to offer lower position numbers than the Preferred Society.

[fol. 173] f. A large number of the members of the selling staff of defendant Preferred Society have from time to time taken positions with said First National Society.

g. Defendants have largely abandoned efforts to fill any division of defendant Preferred Society in State of Georgia and have concentrated their forces on persuading various persons, both members and non-members of defendant Preferred Society, to purchase contingent endowment insurance with First National Society.

h. All said representations are entirely false.

i. To the extent that such representations persuade members of defendant Preferred Society to cease their membership in said Society in order to purchase insurance with First National Society, such representations constitute a fraud on plaintiff and all other members of Preferred Society.

j. To the extent that such representations persuade non-members of Preferred Society to purchase insurance with First National Society in preference to becoming members of Preferred Society, such representations constitute a fraud on plaintiff and all other members of Preferred Society.

19. The purposes of defendant Society, as set forth in its Certificate of Incorporation as recorded in Office of Probate Court in Montgomery, Alabama corporation book 10 at page 173 dated August 28, 1928 were and are as follows:

“The object and purpose of the corporation are to form a fraternal benefit society, without capital stock, to be organized and carried on for the mutual benefit of its members and not for a profit and having a ritualistic form of work and a representative form of government, and to make provision for the payment of benefits in accordance with the laws governing fraternal benefit societies. In addition to the payment of death benefits, the society will also pay benefits to the oldest member of each group in which death occurs, contingent upon mortality experience in such group, such benefits based on a reserve that shall be established and maintained upon a basis of not lower than the American Experience Table of Mortality with one year preliminary term and interest assumption at four per cent.

“Other objects of this Society are to unite in bonds of fraternalism and benevolence, all acceptable persons of good moral character and sound bodily health and who believe in the existence of a Supreme Being, to educate and [fol. 174] improve its members, morally, socially and intellectually and to furnish insurance protection and benefit upon the lives of such of its members as may be entitled thereto under the laws, rules and regulations of the society, for themselves and their beneficiaries as defined by law, as the member may direct to insure and protect and benefit, in the event of loss by death, accident, sickness or other disability, old age or other causes; also to accumulate, maintain, apply, disburse among its members a reserve, emergency, endowment or other fund as may be provided in its law, rules and regulations.”

20. The person principally instrumental in founding defendant Society was defendant Spencer H. Longshore, who, with the assistance of defendant Joseph E. Justice, organized said Society on or about August 28, 1928.

21. Defendant Society was not in fact organized “for the mutual benefit of its members and not for a profit”, nor is it so carried on, but on the contrary was organized and was and is carried on for the particular benefit and profit of defendants Joseph E. Justice, Spencer H. Long-

shore, and M. M. Longshore, as more fully appears from the following particulars: and exhibit "A."

a. Defendant Society's total income from its founding in 1928 up to December 31, 1940 has been approximately \$4,128,313.

b. Defendant Society from its founding in 1928 up to December 31, 1940 has paid as death, contingent endowment, and other claims to members approximately \$600,185, or approximately 14.55% of its total income.

c. Defendant Joseph E. Justice has received as income from defendant Society from January 1, 1931 up to December 31, 1940 approximately \$123,997, and in addition received other large sums prior to January 1, 1931, unknown in amount to plaintiff, but believed to certainly exceed \$8,000.

d. Defendant Spencer H. Longshore has received as income from defendant Society since its organization in 1928 up to December 31, 1940, approximately \$339,095; of this sum he received more than \$39,000 in 1938; more than \$41,000 in 1939; and more than \$48,000 in 1940.

e. Defendant M. M. Longshore received from defendant Society from its founding in 1928 up to December 15, 1939 approximately \$29,429.

f. The total received from defendant Society by Joseph E. Justice between January 1, 1931 and December 31, 1940; by Spencer H. Longshore between August, 1928 and December 31, 1940; and by M. M. Longshore between August, 1928 and December 15, 1939 is approximately \$492,521, or approximately 11.90% of the total income of defendant [fol. 175] Society.

g. The said sum of \$492,521 is approximately 82.06% of the total claims paid to members by the Society from its founding in 1928 up to December 31, 1940.

h. As of December 31, 1940 the total assets of defendant Society were approximately \$

i. Of this sum, approximately \$ consisted of due and deferred premiums, and not of tangible assets.

j. As of December 31, 1940 the tangible assets of defendant Society were approximately \$

k. The said tangible assets of \$, when added to the sum of \$600,185, claims paid to members, amounts to \$

1. The said sum of \$ (as set forth in "k" above), when subtracted from the total income of \$4,128,313, shows that the sum of \$ has been used for expenses; the ratio of expenses to total income is therefore approximately %.

22. Defendant Society was not in fact organized with "a ritualistic form of work and a representative form of government"; in that:

c. Plaintiff was not informed of the fraternal nature of the Society at the time he was solicited to purchase, and did purchase, insurance with the Society.

b. On information and belief the great majority of the Society's members were not informed of the fraternal nature of the Society at the time he was solicited to purchase, and did purchase, insurance with the Society.

c. Plaintiff was not informed of the fraternal nature of the Society until the year 1939, and did not begin to receive notices of lodge meetings until that year.

d. On information and belief; there were in fact no lodges in existence before the year 1939.

e. On information and belief, defendants were sometime during the year 1939 advised by the Insurance Commissioners of Alabama, Mississippi, South Carolina, and Tennessee, some or all, that unless defendants forthwith established subordinate lodges, et al. defendant Society would have to surrender its charter.

f. On information and belief, no Supreme Lodge meeting was ever held or even pretended to be held until the year 1940.

g. On information and belief, the reason for the holding of the Supreme Lodge meeting in the year 1940 was the same as for the establishment of subordinate lodges in the year 1939.

[fol. 176] h. On information and belief, the present subordinate lodges are pretensive and sham.

i. On information and belief, the Supreme Lodge meeting of January 1940 was sham and pretensive in that it neither elected officers and directors nor took any other action as to the policy and management of the Society.

j. On information and belief, all elections of directors and trustees and officers have been without the sanction of any Supreme Lodge meeting, even a pretensive one, in that the dates of the change in directorship, to wit, April 26, 1930 and December 15, 1939 do not coincide with any meeting of the Supreme Lodge.

k. On information and belief, the overwriting or management contract of defendant Spencer H. Longshore is colorable, fraudulent, and void, in that it is a contract entered into merely between said defendant and the persons who were Trustees and Directors at the organization, of defendant Society, and was not entered into with the knowledge, consent, or approval of the Society's membership.

23. On information and belief: the defendants Joseph E. Justice, Spencer H. Longshore, M. M. Longshore and W. Guy Longshore, the active officers, directors, trustees and agents of Preferred Life Assurance Society, operate the same for their own personal benefit, and not for the benefit of the members, in that:

a. They receive and obtain large and exorbitant salaries and commissions as hereinabove set forth, such that they have become wealthy, although plaintiff has never received, nor as he is informed, has any member of the Society ever received, one cent in dividends, despite the fraternal nature of the society;

b. As soon as it became difficult to sell membership certificates in the Society they organized or caused to be organized said "First National Life Assurance Society" in order the more easily to sell this form of insurance;

c. Although the Society is chartered as a fraternal order it did not even attempt to operate as such until 1939, as hereinabove set forth.

d. Defendants thus deprived plaintiff and all other members of their right and opportunity to attend lodge meetings and vote on the election of delegates and officers of the Society and deprived them of any control over the

actions of such officers, chief among whom are the defendants;

e. Defendants have never sent plaintiff a financial statement of the Society giving the huge salary of Spencer H. Longshore and other defendants.

[fol. 177] f. Defendants did not require plaintiff, nor, as he is informed, the great majority of applicants for membership in the Society, to undergo any physical or medical examination at the time of the application for insurance, or at any other time, notwithstanding that such physical and medical examination is specifically required of all applicants for membership in fraternal orders by the Statute law governing the operation of fraternal benefit societies in the State of South Carolina whereby poor physical risks were enabled to become members of Preferred Life Assurance Society, to the prejudice of Plaintiff and all other members in good health.

24. a. Plaintiff received his certificate through the United States mails, and has received numerous notices of premiums due through the United States mails, and defendants have accepted many such premiums from plaintiff and other members of the Society after having abandoned efforts to fill the divisions of the Society, without informing the members of such abandonment.

b. Plaintiff is now informed that this entire scheme of insurance is an illegal lottery and constitutes an illegal and unlawful scheme to defraud, and that it is also a wagering contract in that it attempts to give to plaintiff a beneficial interest in the lives of the other members of his division, in whom he has no insurable interest, and as to whom he does not belong to the class of beneficiaries of fraternal benefit insurance policies recognized and permitted by the Statute Law of the States of Alabama and South Carolina, and this is true for each and every member who participates in the scheme of insurance hereinabove mentioned and described.

c. Even if such scheme is not a lottery and a wager, defendants have breached their contract with plaintiff and all other members by not filling any of the Society's divisions nor making any effort so to do, and have defrauded plaintiff and the other members of the Society by not in-

forming them of the true facts concerning the operation of the Society and by nevertheless continuing to accept the members' monies without making such disclosure.

25. Plaintiff's contract of insurance was executed in and is subject to the laws of the State of South Carolina; that under the laws of said State defendants' actions in relation to his said premium amount to a fraudulent misrepresentation, and to a breach of contract, accompanied by a fraudulent act, either or both, that either of said actions by defendants entitled plaintiff, under the laws of the State of South Carolina, to vindictive damages.

26. Plaintiff's certificate is in full force and effect and he is a member in good standing of defendant Preferred Life [fol. 178] Assurance Society and vitally interested in having the same properly and economically administered, as to its insurance department, as an ordinary fraternal benefit society, selling only ordinary and standard certificates of insurance; defendants, by reason of the fraud and wrongs which they have perpetrated upon the society and upon plaintiff and the other members of the Society as hereinabove set forth, are not fit, proper or competent persons to be entrusted with the management of the insurance feature of the Society; and plaintiff is entitled to have them displaced as officers, directors and trustees and replaced by fit, competent and suitable persons, and in the meantime is entitled to have a receiver to reorganize the Society, to take charge of the insurance department of the Society, and preserve the funds of the same for the benefit of plaintiff and the other members of said Society, said funds being a trust fund for the benefit of plaintiff and the other members of the Society; and plaintiff is further entitled to a money judgment against the defendant officers, directors and trustees, and each of them in such sum of money as may be found proper and just upon an accounting being had of said officers, directors and trustees, said judgment being for the benefit of the Society and its members, for the fraudulent and wrongful conduct of said officers, directors and trustees.

27. By reason of defendants' fraudulent misrepresentations to plaintiff, and by reason of their acts of fraud toward him as hereinabove set forth, plaintiff is entitled to have his certificate reformed so as to be an ordinary

certificate of "whole life" insurance and is entitled to actual and punitive damages in the sum of Two Hundred Thousand (\$200,000.00) Dollars.

[fol. 179] 28. Plaintiff is entitled to relief at the hands of this Court for the reason that any attempt to obtain relief within the Society would be futile.

Wherefore: Plaintiff asks judgment:

1. For damages in the sum of Two Hundred Thousand (\$200,000.00) Dollars.

2. That the defendant officers, directors and trustees be displaced by others who will be fit and suitable and regularly elected by the members of Preferred Life Assurance Society.

3. That a receiver be appointed to take charge of and conserve the assets of the insurance department of said Society, the same being trust assets.

4. For a money judgment against each of said officers, directors and trustees in such sum, or sums, as shall be found to be justly due and owing from each of said officers, directors and trustees to the Society.

5. For such other and further relief as to this Honorable Court may seem just and proper.

6. For the costs and disbursements of this action.

R. K. Wise, 701 Liberty Life Building, Columbia, South Carolina; Wise & Whaley, 701 Liberty Life Building, Columbia, South Carolina; R. B. Barnes, 1029 Frank Nelson Building, Birmingham, Alabama; W. H. Brantley, Jr., 1029 Frank Nelson Building, Birmingham, Alabama; Holley, Milner & Holley, Moore Building, Wetumpka, Alabama.

.

[fol. 180] *Duly sworn to by James Lanier Bell. Jurat omitted in printing.*

[fol. 181]

**EXHIBIT "A" TO AMENDED COMPLAINT
Preferred Life Assurance Society**

	Premiums Received	Claims Paid
1929.....	\$59,372.77	\$4,750.00
1930.....	105,932.85	4,000.00
1931.....	147,742.10	20,550.00
1932.....	218,915.50	42,000.00
1933.....	277,997.70	34,000.00
1934.....	353,925.63	34,850.00
1935.....	414,827.74	72,800.00
1936.....	452,475.54	72,477.27
1937.....	492,802.38	88,231.30
1938.....	511,087.10	75,054.84
1939.....	527,088.18	72,394.64
1940.....	566,164.37	79,076.62
Total.....	\$4,128,331.86	\$600,184.67

**Money Received by Spencer H. Longshore from
Preferred Society**

1929.....	\$7,778.36	1935.....	\$27,304.39
1930.....	16,543.97	1936.....	35,555.06
1931.....	14,387.13	1937.....	38,873.52
1932.....	19,204.39	1938.....	39,359.03
1933.....	23,873.80	1939.....	41,809.53
1934.....	26,225.25	1940.....	48,180.23
Total.....		Total.....	\$339,094.66

**Money Received by Mrs. Spencer H. Longshore
from Preferred Society**

1929.....	\$870.00	1935.....	\$3,900.00
1930.....	1,040.00	1936.....	3,900.00
1931.....	1,040.00	1937.....	4,507.09
1932.....	1,040.00	1938.....	5,216.66
1933.....	1,215.00	1939.....	4,800.00
1934.....	1,900.00	1940.....	None
Total.....		Total.....	\$29,428.75

**Money Received by Joseph E. Justice from
Preferred Society**

1929.....	\$.....	1935.....	\$12,036.23
1930.....		1936.....	15,000.00
1931.....	10,189.02	1937.....	15,074.31
1932.....	12,030.25	1938.....	15,000.00
1933.....	13,268.71	1939.....	14,166.66
1934.....	12,232.17	1940.....	5,000.00
Total.....		Total.....	\$123,997.35

[fol. 182] IN UNITED STATES DISTRICT COURT

ANSWER OF PREFERRED LIFE ASSURANCE SOCIETY TO AMENDED COMPLAINT—Filed March 24, 1941

Comes the defendant, Preferred Life Assurance Society, and for answer to the amended complaint in the above case refles to the complaint as amended separately and severally the First Defense, Second Defense, Third Defense and Fourth Defense as filed to the original complaint, and for further answer to the amended complaint the defendant, Preferred Life Assurance Society, amends its Fifth Defense so as to read as follows:

Fifth Defense

Comes the defendant, Preferred Life Assurance Society, and for answer to the amended complaint in the above case, says:

1. It admits the allegations contained in Paragraph 1 of the amended complaint.

2. It admits the allegations contained in Paragraph 2 of the amended complaint.

3. It admits the allegations contained in Paragraph 3 of the amended complaint.

4. It admits the allegations contained in Paragraph 4 of the amended complaint.

5. It admits the allegations contained in Paragraph 5 of the amended complaint.

6. It admits the allegations contained in Paragraph 6 of the amended complaint. The defendant, F. M. Phillippi was never at any time either an officer or trustee of the [fol. 183] defendant, Preferred Life Assurance Society, and has neither been employed nor in any way connected with this defendant since December 15th, 1939.

7. It denies each and every allegation contained in Paragraph 7 of the amended bill of complaint, denies every conclusion therein averred and every inference therein sought to be drawn.

8. It denies that the bona fide purpose of this action is to reorganize the insurance department of defendant, Pre-

ferred Life Assurance Society, but it admits that the plaintiff asks judgment as shown in the plaintiff's complaint in this cause. It admits that the insurance assets of the Preferred Life Assurance Society exceed one million dollars. It denies that the amount in controversy, exclusive of interest and costs, exceeds \$3,000.00, but avers that the only financial interest or claim which the plaintiff has against this defendant, or against either of the other defendants is represented by his contingent endowment insurance certificate #18497, Class (Age) 23, Division F (C), Position #4, upon which the plaintiff has paid to this defendant an aggregate total amount in dues of the sum of only \$202.35, and which said certificate if presently payable would be payable in the amount of only \$1,000.00, and that in no event would this plaintiff be entitled from this defendant to a greater sum than said \$1,000.00. It avers that the damages stated in the complaint are colorable, and are beyond the amount of any reasonable expectation of recovery, and that under the facts of the case the plaintiff has no reasonable expectation of recovering from this defendant an amount as great as \$3,000.00 exclusive of interest and costs. It avers that the claim for the amount of recovery as made in the complaint is made for the purpose of bringing this action within the jurisdiction of this court, and that as a matter of fact the claim of the plaintiff in this cause does not really and substantially involve a controversy properly within the jurisdiction of this Court.

9. It admits that this defendant writes a form of insurance [fol. 184] known as contingent endowment insurance; that the certificates issued by this defendant for contingent endowment insurance are in the uniform amount of \$1,000.00, and no such certificates are issued for more or less than that amount; that the form of certificate for contingent endowment insurance issued by this defendant at the time that the plaintiff became a member of this defendant society is shown by a sample copy of such certificate attached to this answer and marked Exhibit "A"; that the form of contingent endowment certificate now issued by this defendant society and which has been the form in use for the past several years is shown by a sample copy of such form of certificate attached to this answer and marked Exhibit "B"; that for the purposes of contingent endowment fund distribution all certificates which

participate therein are grouped in classes according to age as shown at the time the certificate is issued, and in each class there are 25 divisions or more as authorized and limited by an Act of the Legislature of Alabama approved July 30th, 1931, and each division may contain no more than 25 members. The certificate holders of each division are numbered from 1 to 25 inclusive. Member No. 1 is the certificate holder who has been in his division the longest period of time. When a death occurs in any division the dead member's beneficiary receives the face amount of the dead member's insurance as a death claim, and the living member in good standing who holds the lowest position in the same division collects the face amount of his own insurance as a living claim, and his certificate is forthwith cancelled. No member in any division is permitted to know or ascertain the name of any other member in his division. By reason of the fact that upon the death of any member holding a certificate in the face amount of \$1,000.00 there is paid by the defendant society the said amount of \$1,000.00 and an additional amount of \$1,000.00 as a living benefit to the living member in good standing who holds the lowest position in the same division, that is, the total [fol. 185] sum of \$2,000.00 is paid by the defendant society upon the death of any member, the premiums charged are necessarily higher than the premium for an ordinary \$1,000.00 certificate. The amounts of said premiums are arrived at on a scientific actuarial basis, and are fair and reasonable. The amounts of said premiums are required by the Superintendent of Insurance of the State of Alabama to be actuarially adequate, and the amounts of premiums charged by defendant society have in each instance been approved by the Superintendent of Insurance of the State of Alabama, and are in line with premiums required by reputable life insurance companies throughout the United States. It denies that the essence of the contract is that there be at all times 25 members in each division, and it denies that the Society binds itself at all times to keep and maintain each division at a strength of 25 members. It avers that the plaintiff could in no event have been No. 5 at the time he became a member of the defendant society if such averments are true. It avers that the plan of insurance is for a certain number of divisions, and in each division there may be not more than 25 mem-

bers, but it is not contemplated, and in fact is impossible to keep and maintain 25 members at all times in each division.

10. This defendant admits that on November 2nd, 1934 the plaintiff applied for membership in the defendant Society and for a certificate of contingent endowment insurance issued by this defendant society, and the defendant attaches to this answer a photostatic copy of the plaintiff's said application and marks the same Exhibit "C" and makes the same a part of this answer. This defendant denies emphatically those portions of Paragraph 10 of the amended complaint alleging that its agent made the representations alleged by plaintiff to have been made and claimed to be untrue. It avers that no agent had any authority to make any such representations, and that the terms of the application of the plaintiff for membership in this defendant society, and for certificate of contingent endowment insurance are plainly set forth in the written application, and that no agent has any authority to vary the [fol. 186] terms of said application. It denies that plaintiff believed any such representations or relied upon any such representations.

11. It admits that upon the plaintiff's application the defendant issued and delivered to the plaintiff contingent endowment insurance certificate #18497 Class (Age) 23, Division F (c), Position #5. It admits that the plaintiff accepted the same and has paid the premiums or dues on the same in the aggregate amount of \$202.35.

12. It denies that the plaintiff accepted his said certificate in the reasonable belief that there were 25 members in his said division, and it avers that plaintiff knew at the time the position given him was No. 5, and that there were only four other members in the said division. It denies that the plaintiff has paid premiums on said certificate in the reasonable belief that there were at all times 25 members in his said division, and it avers and alleges that this defendant has repeatedly informed the plaintiff in writing of the position which he held in said division and of the number of members in his said division, and it avers that this defendant was ready and willing at all times to give to this plaintiff this information and any other legitimate information with regard to his class and division. It specifically avers that letters were mailed by this defendant

to this plaintiff at the address to which his notices of premiums or dues were mailed, and which letters were never returned to this defendant and were therefore received by said plaintiff; that a copy of a letter so mailed by this defendant to said plaintiff on, to-wit, January 10th, 1936, is hereto attached, marked Exhibit "D" and made a part hereof; that a copy of a letter so mailed by this defendant to said plaintiff on, to-wit, April 4th, 1938, is hereto attached, marked Exhibit "E" and made a part hereof; that a copy of a letter so mailed by this defendant to said plaintiff on, to-wit, January 31st, 1940, is hereto attached, [fol. 187] marked Exhibit "F" and made a part hereof. It avers that continuously from the time plaintiff accepted said certificate and until the present time the plaintiff has known that there were not 25 members in his said division.

13. It denies that the plaintiff first learned in January, 1940 that there were not 25 members in his division but only 10 members of whom the plaintiff is No. 4, and it avers in fact as hereinbefore alleged in more detail in the twelfth paragraph of this answer, that the plaintiff has at all times since the acceptance of his certificate known that there were not 25 members in his division, and that such information has been repeatedly given to the plaintiff by this defendant.

14. This defendant admits that it has never had a division containing 25 members, and that none of its divisions have ever contained more than eleven members, but this defendant avers that it has made every reasonable effort to secure as many members as possible up to 25 members in each of its divisions, and that it is to this defendant's financial interest to secure as many members as possible in each division.

15. It denies that this defendant has no reasonable expectation of filling any division and never had any intention of so doing, and it avers and alleges that it has continuously and actively sought to fill the plaintiff's division and all other divisions both before and since the plaintiff became a member of the defendant society, and has sought actively and aggressively to procure as many members in each division as it possibly could; that this defendant has had an increase in business in force and in the number of

its members every year since the plaintiff has been a member of this defendant society; that for each of the years in which and since the plaintiff became a member of the defendant society, the defendant has procured new members, which new members have been added to existing divisions; [fol. 188] that the amount of insurance issued by the defendant in each of said years is as follows:

Year	Amount
1934	\$3,551,550.00
1935	3,688,500.00
1936	3,232,250.00
1937	3,072,300.00
1938	2,724,050.00
1939	3,424,500.00
1940	3,724,000.00

That in excess of ninety per cent. of such* above total amount of insurance issued by the defendant society in each of said years was contingent endowment insurance; that this defendant now has employed more agents soliciting memberships and applications for certificates of contingent endowment insurance than at any time in the history of this Society, and this defendant is now most actively and aggressively seeking to procure as many members in each division as possible. Defendant admits (a) that its total maximum divisions were 1456 and that it now has 1454 subsisting divisions, (b) that all such divisions were opened prior to July 30th, 1931, (c) that if all of said divisions were filled to the maximum at one time they would accommodate 36,350 members, (d) that as of December 31st, 1940 this defendant had 10,241 members, and (e) that the maximum membership this defendant has heretofore had has not exceeded 11,000 members. This defendant denies every allegation contained in sub-paragraph (f) of Paragraph 15 of the amended complaint, and further emphatically denies that it has ever solicited business or accepted premiums through its agents, through the United States mail or in any other way upon the representation [fol. 189] that all or any of its divisions contained 25 members, or upon any representation that all or any of its divisions were continuously kept and maintained at 25 members.

16. It denies the allegations contained in Paragraph 16 of the amended complaint, and says that it has made every effort to fill plaintiff's division, and every other division, as more particularly set out in Paragraph 15 above. That but for failure of applicants to meet the necessary and proper requirements for membership and for lapses of certificates issued, over which this defendant has no control, plaintiff's division would have been virtually filled.

17. It admits that in the nature of things on an average a member in a division holding position No. 5 would be moved up to position No. 1, and thereafter his certificate would mature in a shorter period of time if there were 25 members in a division than if there were 10 members in the division, but this defendant denies that it has breached its contract with the plaintiff, and it denies that the plaintiff has been damaged by any act or omission on the part of this defendant.

[fol. 190] 18. This defendant, as hereinbefore averred, has not ceased to try to fill plaintiff's division and every division, but on the contrary is actively and aggressively endeavoring to fill every division, and in the year 1940 this defendant issued contracts of contingent endowment insurance for a larger amount than in the year 1934, in which year the plaintiff became a member of the defendant society; that this defendant did not organize the First National Insurance Company, or any other insurance company, but this defendant did enter into a contract under which it reinsured members for the First National Life Assurance Society of Atlanta, Georgia, which contract is the same as the contract of reinsurance which this defendant society has with the Lincoln National Life Insurance Company; that as the result of said reinsurance contract with First National Life Assurance Society this defendant has received a net benefit as shown by the list of premiums received and claims paid as follows, to-wit:

Year	Premiums Received	Claims Paid
1936	\$ 817.75	\$2,000
1937	10,199.79	3,000
1938	15,746.56	7,400
1939	11,675.96	5,111
1940	6,412.44	9,302
	<hr/>	<hr/>
	\$44,852.50	\$26,813

That from the premiums received for such reinsurance there are no commissions payable but that the entire amount of said premiums is for the benefit of this defendant and its members. This defendant denies that all or substantially all, or in fact any material numbers of the selling staff of this defendant society have taken similar positions with the First National Insurance Company (correct name First National Life Assurance Society); that no agents or members of the selling staff of Preferred Life Assurance Society have ever left this defendant [fol. 191] society to go with said First National Company except agents who were considerably in debt to the Preferred Life Assurance Society, or agents who were greatly discouraged and were being approached by other companies selling the same type of certificate to act as representatives of such companies, and who would in any event have left the employment of the Preferred Life Assurance Society; that since the Preferred Life Assurance Society had a reinsurance agreement with said First National Society, such representatives were encouraged to go with said First National Society rather than with a company with which, the Preferred Life Assurance Society did not have a reinsurance agreement; that at the present time to the best of this defendant's knowledge there are only two agents on the selling staff of the First National Life Assurance Society who formerly represented the Preferred Life Assurance Society; that the Preferred Life Assurance Society now has a large number of agents soliciting members for the issuance of contracts of contingent endowment insurance in the State of Georgia in which said First National Company has its Home Office, and that this defendant society in the year 1940 wrote approximately the same amount of contingent endowment insurance in said State of Georgia as it did in the State of South Carolina in which latter State the said First National Society does not do business; that at the present time the total number of agents on the selling staff of the Preferred Life Assurance Society soliciting for contracts of contingent endowment insurance is larger than it has ever been in the history of this defendant society. This defendant further avers that it has mailed statements disclosing its financial condition to the plaintiff and every other member at least once each year, and [fol. 192] that reports from Dunne & Co., a recognized company reporting on the financial condition of insurance

companies, have been mailed to the plaintiff and to other members who pay on a monthly basis, as the plaintiff does, several times during each year along with the receipts and notices, and that if the plaintiff received receipts for his dues he received with such receipts such financial statements and reports from Dunne & Company. This defendant denies each and every other allegation contained in Paragraph 18 of the amended complaint.

19. It admits the allegations contained in Paragraph 19 of the amended complaint.

20. It admits the allegations contained in Paragraph 20 of the amended complaint.

21. This defendant society was organized in strict conformity with the laws of the State of Alabama and under the supervision and direction of the Department of Insurance of the State of Alabama, and as organized and as conducted constitutes a fraternal benefit society and is for the mutual benefit of its members and not for profit.

The fact that the officers of the society receive compensation for their services and are thereby benefited does not in any sense or by any process of reason constitute the society an organization conducted for profit, or destroy its status as a fraternal benefit society. It admits the correctness of the figures as set forth in paragraph 12 of the amended bill of complaint in sub-section A to G inclusive; it avers that the following figure should be inserted in the blank spaces in sub-section H to L inclusive as follows:

H	\$1,283,355.64
I	6,471.17
J	1,276,884.47
K (1st)	1,276,884.47
(2nd)	1,877,069.47
L (1st)	1,877,069.47
(2nd)	2,251,243.50
(3rd)	54.53%

[fol. 193] The figures shown on Exhibit "A" are correct except as to amount of premiums received. The amount shown under said heading constitutes the total income from the society from premiums and other sources. The total from premiums received was \$3,912,600.77 instead of \$4,128,331.86, as shown on said Exhibit "A". That defend-

ant has only paid as death and contingent endowment and other claims to members approximately 14.55% of its total income is accounted for by the fact that care is exercised in the acceptance of risks and by the fact that the society has been in existence only about 11 years; that the percentage of payment of income to members will substantially increase in the future, as the membership increases in age and as all members are paid in full when they reach 70. There are various eventualities that may from time to time substantially increase the amount paid to members. That in addition to the amounts paid to members on their certificates the society maintains for the benefit of members numerous lodges and members who attend are entertained with banquets and otherwise. The expense of the social features, which is substantial, is not shown as a payment to the members, but is included in the expenses of operation. The compensation paid to the President, Manager and Secretary up to December 15, 1939, while apparently large as salaries go in this section of the country, are in line with compensation received by officers of similar organizations throughout the country, and is not unreasonable or unfair, and in no sense a fraud against the society or its membership. The only officer receiving a seemingly large compensation is the General Manager—S. H. Longshore, and his compensation is on a commission basis and is predicated on the growth of the Society resulting from his efforts. Original trustees, receiving their appointment strictly in conformity with the laws of Alabama, and with full authority, when the society had but \$5000.00 in assets and about 500 members entered into a contract with said Longshore under which his reward was measured by the skill, energy and ability with which he [fol. 194] managed the society and promoted its growth. As shown hereafter in answer to paragraph 23, at a meeting of the Grand Lodge of said Society held on the 15th of January, 1940, the contract with the said Longshore was reduced from 25 to 15 years and has now only about three years to run, and his commission was reduced from 7½% to 5%; that at said Grand Lodge Meeting the compensation of the President, Joseph E. Justice was reduced from \$15,000.00 to \$5,000.00. The Secretary, M. M. Longshore, resigned on the 15th of December, 1939 and has not since been connected with or received any compensation from the Society. That the ratio of expenses—54.53%, to

the total income of the society, is less than the average ratio of expenses to income of the majority of fraternal benefit societies operating on substantially similar lines throughout the United States, and has been duly checked and passed on by the Insurance Department of Alabama. The reduction of compensation at the January 15, 1940 meeting of the Grand Lodge and other economies being practiced, is expected to reduce this ratio in the future to an appreciable extent; that the State of Alabama has an Insurance Department specifically charged and directed with the duty and responsibility of administering all laws of the State relating to insurance and fraternal benefit societies, and to this department annual and other reports are made and the affairs of the society investigated and examined; said department has been and is fully advised of every feature of the society's operations and all suggestions and requirements of the Department of Insurance always have been promptly complied with; that this society has a surplus that insures protection to all of its members in the face of any eventuality which is in itself an answer to any intimation that the society is not being operated fairly, honestly and efficiently.

[fol. 195] 22. Defendant denies each and every allegation contained in paragraph 22 of the amended complaint. It avers that as elsewhere set forth in this answer, all members were informed of the fraternal nature of the society, and avers that the society did have in existence lodges from the early days of its organization; it avers that Supreme Lodge meetings were held every four years as provided by the laws of the State of Alabama; it avers that the Supreme Lodge meeting held on January 15, 1940, was held in strict conformity with the laws of the State of Alabama and the Constitution and Rules of the Society; and that the members thereof were duly and legally elected, and at such meeting performed all of the duties required of them as such. With special reference to sub-section K of paragraph 22, it avers that the contract with the said S. H. Longshore was made on behalf of the society by trustees duly constituted as such by law, and with full power as such trustees, . . . that it was not contemplated or necessary that the membership of the society should consent to or approve such contract. This defendant avers, however, that said contract was known to trustees subsequently elected by

delegates to the Grand Lodge meetings, said delegates being elected by the members of the society; that it is not contemplated and is impracticable for all members of the society to consent to or approve of the details of the management of the affairs of the society, which are by law vested in the trustees.

23. Defendant denies the allegations of paragraph 23 of the amended complaint, and avers that the compensation of the officers of the Society are reasonable and have been approved by the insurance department of the State of Alabama; that no compensation is paid to trustees and directors as such, and that the officers are paid stated salaries with the exception of the General Manager whose compensation is on a commission basis established by contract [fol. 196] with the Society when it was in its infancy, and whose compensation for years was small and incommensurate with the time devoted and efforts made for the advancement of the Society; it avers that under the laws of its organization it is not required that the members shall be paid dividends; that under the careful and economical conduct of the affairs of this defendant it has accumulated a substantial surplus, same being as shown by the examiners from the Insurance Department of Alabama and Mississippi as of December 31, 1939, in the sum of \$261,134.73; that following said report this defendant voluntarily gave without charge to its members paid-up and extended insurance as a part of their certificates; that this was approved by the Insurance Department of the State of Alabama. This defendant avers that plaintiff and all other members of the Society are sent financial statements annually and often, as hereinbefore alleged, more frequently. It avers that it has never sought to conceal that it was a fraternal benefit society but rather to feature that fact, and its agents have been fully advised and instructed accordingly; that the certificate issued by this defendant specifically states in bold letters that it is a fraternal benefit society, that the application for membership signed by the applicant provides that the applicant shall present himself to the Lodge for initiation and for all ritualistic obligations of the Society. It avers that a special meeting of the Grand Lodge of the Society was held in the City of Montgomery on the 15th day of January, 1940, and that all certificate holders of the Society in South Carolina, as well as in other

States, were fully notified and advised clearly as to the method for electing representatives to said Grand Lodge; [fol. 197] that a copy of such notice is hereto attached, marked Exhibit "G" and made a part hereof; that meetings were held and representatives elected who did attend said Grand Lodge meeting; that the election of said delegates and the proceedings of the Grand Lodge were in strict conformity with the Insurance laws of the State of Alabama, and in accordance with the Constitution and By-Laws of his Society, and were examined and approved by examiners appointed by the Insurance Departments of the States of Alabama and Mississippi; that at said Grand Lodge meeting the salary of the President was reduced, and the contract with the General Manager was modified, and other economies were provided for; that there was also provided at said meeting the additional benefits to members of extended and paid-up insurance. It denies that medical examinations are required by the laws of the State of Alabama of applicants for membership in fraternal orders, and neither admits nor denies whether such medical examinations are required by the laws of the State of South Carolina. It admits that in many instances it has accepted members without requiring such members to undergo a physical or medical examination if such members comply with the age limit prescribed in the defendant society's Constitution and By-Laws. It denies that it has accepted poor physical risks in South Carolina or elsewhere. It avers that in addition to the sworn answers of the applicant and the recommendation of the defendant's agent, the defendant received through an independent investigating agency an exhaustive report concerning the health and the habits of the applicant, and with relation to any matters affecting his insurable risk, and that such procedure has proven to be as satisfactory and effective as medical examination. It avers that women applicants above the age of forty, and men applicants above the age of forty-five are always required, [fol. 198] regardless of the amount of insurance applied for, to undergo a physical and medical examination, and that all applicants, regardless of age, applying for more than \$1,000.00 insurance, are required to undergo a physical or medical examination. It avers that the soundness of the practice of the defendant society in accepting physical risks is demonstrated by the ratio of actual deaths experienced

to expected mortality according to the American Experience Table of Mortality as listed below:

1935	39.97%
1936	42.03%
1937	35.46%
1938	30.56%
1939	29.32%
Five years average	35.47%

That the percentage of deaths among the members of this defendant society has, during the five years hereinabove listed, been greatly less than the percentage of deaths that would be anticipated according to the American Experience Table of Mortality, and has been in the percentage of such expected mortalities as hereinabove stated; that such experience demonstrates that this defendant has not accepted poor physical risks for membership.

24. It admits plaintiff received certificate premium notices, etc. through the United States mail, but it emphatically denies having lessened, much less abandoned, its efforts to fill the divisions of the Society. It denies that the contingent endowment certificate of insurance is a lottery or is fraudulent in any manner; or that it is a wagering contract further than in the sense that all insurance might be said to some extent and in some ways to contain an element of chance. This objection to this form of policy was raised before a Three Judge Federal Court in Oklahoma—*Liberty National Life Insurance Company v. Reed*, 24 Fed. Sup. page 103—where it was duly considered and this form of insurance upheld by said Court. This form of policy has [fol. 199] been specifically accepted and legalized by Legislative action in Alabama, and by statutory action in Georgia, South Carolina, Louisiana and Mississippi as well. The defendant denies each and every other averment contained in Paragraph 24 of the amended complaint.

25. It admits that the plaintiff was in the State of South Carolina when he made application for membership in the defendant society, and for a certificate of contingent endowment insurance, but it avers that the defendant society is incorporated under the laws of the State of Alabama and issued said certificate of contingent endowment insurance in the City of Montgomery, Alabama. It neither admits nor

denies the conclusion that the plaintiff's contract of insurance is subject to the laws of the State of South Carolina. It emphatically denies that under the laws of said State, or under any other laws the defendant's actions have amounted to a fraudulent misrepresentation or to a breach of contract accompanied by a fraudulent act, either or both, and it emphatically denies that any action by defendant, entitled the plaintiff under the laws of the State of South Carolina or any other laws to any damages either actual or vindictive.

26. This defendant admits that the plaintiff's certificate is in full force and effect, and he is a member in good standing of the defendant, Preferred Life Assurance Society, and has the same interest in the proper administration of said Society as every other member thereof. This defendant denies each and every other averment in paragraph 26 of the amended complaint.

As further answer to the unfounded and unwarranted allegations of paragraph 26 of the plaintiff's amended complaint, this defendant lists its growth in assets and surplus from year to year as follows:

[fol. 200]

Year	Assets	Surplus
1929	\$ 2,410.25	\$ 1,268.04
1930	26,823.76	9,412.59
1931	60,160.51	16,999.84
1932	94,304.58	33,166.84
1933	171,267.16	44,411.66
1934	309,644.82	94,711.52
1935	442,985.68	147,388.92
1936	566,953.81	171,876.47
1937	705,925.79	192,417.54
1938	901,411.92	250,180.58
1939	1,062,503.28	267,896.29

This defendant avers that this continuous healthy growth of this society, even during the years of depression was not a matter of accident but was the result of honest and intelligent work of its officers and agents.

27. It denies any fraud or misrepresentations on its part, and denies any fraudulent misrepresentations to plaintiff. It avers that by the terms of his certificate of insurance, a

copy of which has been hereto attached and marked Exhibit "A", the plaintiff has the following privilege of changing to other forms of certificate: "At any time before default in payment of dues the assured may, by filing a written request, exchange this certificate for a certificate upon any plan of protection then issued by the Society for the same face amount as this certificate." It avers that this defendant society issues ordinary life, 20 payment life and forms of endowment certificate, but it avers that the plaintiff has never made any request to exchange his certificate for a certificate upon any other plan. It avers in fact that the plaintiff has never registered any complaint with the defendant society, and that the first evidence of any dissatisfaction on the plaintiff's part furnished to the defendant society was the serving of the summons and complaint in this cause upon the defendant society. This defendant denies that the plaintiff is entitled to either actual or punitive damages in any sum, or to any relief in this action.

[fol. 201] 28. This defendant denies the allegations contained in Paragraph 28 of the amended complaint.

Further answering this defendant says that the plaintiff does not show that he has attempted to obtain relief within the Society, and the complaint does not set forth with particularity the efforts of the plaintiff to secure within the Society or from the Directors and Trustees such action as he desires, nor the reasons for the plaintiff's failure to obtain such action, nor the reasons for not making such effort. Further answering this defendant says the plaintiff does not show that he has attempted to obtain relief before the Superintendent of Insurance of the State of Alabama, the officer vested by the Legislature of Alabama with supervision over the operation of Insurance Companies, and fraternal benefit societies such as this defendant, and this defendant further avers that the plaintiff can obtain any relief to which he is legally or equitably entitled within the Society, and further can obtain any relief to which he is legally or equitably entitled before the Superintendent of Insurance of the State of Alabama.

29. The exhibits referred to herein, "A" to "G" inclusive, are attached to and made a part of the original

answer filed in this cause, and are hereby referred to and made a part of this answer the same as if attached hereto.

Hill, Hill, Whiting & Rives, Peyton D. Bibb, Attorneys for Defendant.

I, A. F. Whiting, of Counsel for the defendant, Preferred Life Assurance Society, in the above captioned action, do hereby certify that I have this day delivered to Hon. R. T. Milner, of the firm of Holley & Milner, of Counsel for plaintiff, a copy of the above and foregoing reply by mailing to him at Wetumpka, Alabama.

This 24 day of March, 1941.

A. F. Whiting, Of Counsel for Defendant, Preferred Life Assurance Society.

Address: Montgomery, Alabama.

[fol. 202] IN UNITED STATES DISTRICT COURT

ANSWER OF INDIVIDUAL DEFENDANTS TO AMENDED COMPLAINT
—Filed March 24, 1941

Come the defendants, Joseph E. Justice, Spencer H. Longshore, M. M. Longshore, W. Guy Longshore, J. J. Warren, R. D. Carlton, A. D. Merchant, A. F. Whiting, B. Cosby Bird and F. M. Phillippi, and for answer to the amended complaint in the above cause adopt as their answer severally and separately the amended answer as filed to said amended complaint by the defendant, Preferred Life Assurance Society of Montgomery.

Hill, Hill, Whiting & Rives; Peyton D. Bibb, Attorneys for Defendants.

I, A. F. Whiting, of Counsel for the defendants in the above captioned action, do hereby certify that I have this day delivered to Hon. R. T. Milner, of the firm of Holley & Milner, of Counsel for plaintiff, a copy of the above and foregoing reply by mailing to him at Wetumpka, Alabama.

This 24th day of March, 1941.

A. F. Whiting, Of Counsel for Defendants.

Address: Montgomery, Alabama.

[fol. 203] *Duly sworn to by J. J. Warren. Jurat omitted in printing.*

[fol. 204] DISTRICT COURT OF THE UNITED STATES MIDDLE
DISTRICT OF ALABAMA

JAMES LANIER BELL, Plaintiff

v.

PREFERRED LIFE ASSURANCE SOCIETY OF MONTGOMERY, ALABAMA, Joseph E. Justice; M. M. Longshore, B. Cosby Bird, J. J. Warren, F. M. Phillippi, Spencer H. Longshore, and John Doe, Defendants.

OPINION AND JUDGMENT—Filed May 6, 1941

The plaintiff, a citizen of South Carolina, filed this action against the defendant, Preferred Life Assurance Society, a corporation organized under *the fraternal benefit statutes of Alabama*, and a number of its officers, directors, trustees and agents. Federal jurisdiction is alleged on the ground of diversity of citizenship. The defendant Society contends that the Court lacks jurisdiction because the amount actually in controversy is less than \$3,000.00 exclusive of interest and costs, and also that the complaint fails to state a claim upon which relief can be granted. Upon oral arguments and briefs, the case is submitted to the Court for decision upon the primary question of whether the Court has jurisdiction to grant the relief prayed by the plaintiff. That question can be most conveniently answered by considering the several items of relief prayed.

The plaintiff asks judgment: "(1) For damages in the sum of \$200,000.00". According to the complaint, the plaintiff's financial interest or claim against the defendant Society is represented by a certain contingent endowment insurance certificate. Upon that certificate, it appears from the pleadings *and is conceded in argument, that the plaintiff can never be entitled to a sum greater than \$1,000.00*, and that at present he has paid a total in dues of only \$202.35.

"If, from the face of the pleadings, it is apparent to a legal certainty, that the plaintiff cannot recover the amount claimed or if, from the proofs, the court is satisfied to a like [fol. 205] certainty that the plaintiff never was entitled to that amount, and that his claim was therefore colorable for the purpose of conferring jurisdiction, the suit will be dis-

missed." *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U. S. 283, 289; 82 L. ed. 845, 848.

It is obvious that insofar as the plaintiff seeks to recover a money judgment against the defendant Society, there is not really and substantially involved a controversy properly within the jurisdiction of this Court.

The plaintiff asks judgment further:

"(2) That the defendant officers, directors and trustees be displaced by others who will be fit and suitable and regularly elected by the members of Preferred Life Assurance Society.

"(3) That a receiver be appointed to take charge of and conserve the assets of the insurance department of said Society, the same being trust assets.

"(4) For a money judgment against each of said officers, directors and trustees in such sum, or sums, as shall be found to be justly due and owing from each of said officers, directors and trustees to the Society."

It is not alleged that the Society is insolvent, nor that its business is being operated at a loss. The contrary affirmatively appears from the face of the pleadings and is conceded. If the first item of relief prayed by the plaintiff, namely a money judgment, is granted by a Court of competent jurisdiction, and that judgment is collected, as it appears it can be, then would the plaintiff be longer interested in the defendant Society, and possibly entitled to have its officers displaced or a receiver appointed?

Although such relief is not specifically prayed, the suggestion is made in paragraph 27 of the complaint that "plaintiff is entitled to have his certificate reformed so as to be an ordinary certificate of 'whole life' insurance". If so, then plaintiff might remain interested in the insurance [fol. 206] funds of the defendant Society even after any money judgment to which he might now be entitled had been paid. But there is no claim that the plaintiff applied for or intended to take an ordinary certificate of 'whole life' insurance. The plaintiff contends that the agent of the defendant Society induced him to apply for the certificate of contingent endowment insurance by certain alleged false and fraudulent representations, that the defendant Society bound itself to maintain the division in which plaintiff held

membership at a strength of 25 members which would enhance the probability of early collection of the insurance by plaintiff as an endowment that the defendant Society has never had 25 members in any division and has no reasonable expectation of ever filling any division, and that "this entire scheme of insurance is an illegal lottery and constitutes an illegal and unlawful scheme to defraud, and that it is also a wagering contract." (See paragraph 24, subdivision b. of complaint). The truth of any or all of these contentions if established would not entitle the plaintiff to have his certificate reformed so as to be an ordinary certificate of 'whole life' insurance. It is fundamental that, "The instrument can only be reformed to conform to the parties' agreement. . . . Equity cannot make a new contract for the parties, or add new terms thereto." 53 C. J. p. 909, Sec. 5. Or, as expressed by the Ninth Circuit Court of Appeals in *Bartelme v. Merced Irrigation District*, 31 F. (2d) 10, 13:

"Power to reform instruments for fraud or mistake is universally conceded to courts of equity, but a court of equity has no power to reform a contract, so as to insert in it a provision which the contracting parties never intended it to contain. It can go no farther than to make the contract express the true intention of the parties as to its provisions. In other words, it can make the contract only what the parties intended it to be."

[fol. 207] Assuming then that the Court took jurisdiction, awarded damages to the plaintiff, and appointed a receiver what disposition should then be made of the cause?

The complaint does not pray for a liquidation or distribution of the assets of the defendant Society. "There is no occasion for a Court of equity to appoint a receiver of property of which it is asked to make no further disposition." *Gordon v. Washington*, 295 U. S. 30, 37.

It is well settled that, "A bill in equity which seeks no other relief than the appointment of a receiver will not usually be entertained." *Arcola Sugar Mills Co. vs. Burnham* (5th C. C. A.) 67 F. (2d) 981.

In a very recent case in the United States Supreme Court decided February 17, 1941, *Kelleam v. Maryland Casualty Co., et al*, No. 349, October Term, 1940, Ms., it was said: "This Court has frequently admonished that a federal court of equity should not appoint a receiver where the appoint-

ment is not a remedy auxiliary to some primary relief which is sought and which equity may appropriately grant."

Displacement of the officers of defendant Society, or reorganization of the defendant Society is not auxiliary, ancillary, or necessary to any primary relief sought by plaintiff. Without such aid, the plaintiff can recover and collect any moneys to which he may be or become entitled.

Other contentions have been elaborately argued by counsel for the respective parties, viz: whether, insofar as the complaint prays for a reorganization of the insurance department of the defendant Society, the amount in controversy is measured by the insurance assets of the Society alleged to exceed \$1,000,000.00, or by the amount of the plaintiff's claim; whether under or by analogy to District Court Rule 23 (b) the complaint should allege that the plaintiff has made efforts to secure relief through the Society, or even through the Superintendent of Insurance of the State of Alabama, or the Insurance Departments of the other States in which it does business, and which have [fol. 208] supervision of the business of the Society. The Court does not find it necessary to decide those propositions inasmuch as it is satisfied that the complaint fails to state a claim upon which relief, within the jurisdiction of the Court, can be granted.

It Is Therefore:

Ordered, adjudged and decreed by the Court that the plaintiff's complaint be dismissed without prejudice, and that the costs of this action be taxed against the plaintiff, for which execution may issue.

Done this 5th day of May, 1941.

C. B. Kennamer, Judge.

[fol. 209] IN THE DISTRICT COURT OF THE UNITED STATES,
MIDDLE DISTRICT OF ALABAMA

[Title omitted]

NOTICE OF APPEAL—Filed July 29, 1941

Notice is hereby given that James Lanier Bell, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Fifth Circuit from the Order of Honorable C. B. Kennamer, Judge of the United States District Court

for the Middle District of Alabama, dated May 5, 1941, dismissing plaintiff's complaint, and from the final judgment of dismissal entered or to be entered on said order.

R. K. Wise, 701 Liberty Life Building, Columbia, S. C.; Wise & Whaley, 701 Liberty Life Building, Columbia, S. C.; R. B. Barnes, 1029 Frank Nelson Building, Birmingham, Alabama; W. H. Brantley, Jr., 1029 Frank Nelson Building, Birmingham, Alabama; Holley, Milner & Holley, Moore Building, Wetumpka, Alabama; Ball & Ball, 719 First National Bank Bldg., Montgomery, Alabama, Attorneys for the Appellant.

Copy mailed Hill, Hill, Whiting & Rives, July 29, 1941.
Filed July 29, 1941.

[fols. 210-213] Cost Bond on Appeal for \$250.00 filed July 29, 1941, omitted in printing.

[fol. 214] IN UNITED STATES DISTRICT COURT

APPELLANT'S STATEMENT OF POINTS ON APPEAL—Filed July 31, 1941

That his Honor erred in dismissing the complaint in that:

I

It states a claim on which relief can be granted for fraud and deceit.

II

It states a claim on which relief can be granted for breach of contract accompanied by a fraudulent act.

III

It states a claim on which relief can be granted in the nature of an original action to reorganize the defendant Society.

IV

It states a claim on which relief can be granted in the nature of a derivative action against the officers and directors (trustees) for a money judgment.

All of which claims exceed \$3000.00 exclusive of interest and costs.

R. K. Wise, 701 Liberty Life Building, Columbia, S. C.; Wise & Whaley, 701 Liberty Life Building, Columbia, S. C.; R. B. Barnes, 1029 Frank Nelson Building, Birmingham, Alabama; W. H. Brantley, [fol. 215] Jr., 1029 Frank Nelson Building, Birmingham, Alabama; Holley, Milner & Holley, Moore Building, Wetumpka, Alabama; Bell & Ball, 719 First National Bank Bldg., Montgomery, Alabama, Attorneys for Appellant.

Service accepted this 30th day of July, 1941.

Hill, Hill, Whiting & Rives, Richard T. Rives, Attorneys for Appellees.

[fol. 216] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 217] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT IN FORMA PAUPERIS OF JAMES LANIER BELL—Filed
Oct. 31, 1941

STATE OF SOUTH CAROLINA,
County of Richland:

Before me, the undersigned authority, personally appeared James Lanier Bell, known to me, who being duly sworn, deposes and says that he is the plaintiff in the above entitled action and the appellant in the appeal prayed for in said action from the judgment of this court and that he is a citizen of the United States of America and was entitled to commence the action in this case and the appeal prayed for in this case and that the appeal is taken in good faith but that because of affiant's poverty he is unable to pay the costs of printing the record on the appeal and is unable to give security for same and that he believes that he is entitled to the redress he seeks in such suit and in such appeal and that the cause of action in said suit grows out of the unlawful acts of the defendant in the operation of an insurance company in which affiant is a policyholder, and

affiant says that he is a married man and that his wife is in [fol. 218] a family way and that he is employed at the small earning of \$35.00 a week and that his job requires him to furnish an automobile and gasoline and that he had to buy an automobile on credit on which he is making monthly payments which leaves barely enough for him to live on, and that he has not funds sufficient to finance said appeal.

James Lanier Bell.

Sworn to and subscribed before me with my notarial seal affixed, on this 25th day of October, 1941. James D. Walters, Notary Public for South Carolina. My Commission expires at the pleasure of the Governor. (Seal.)

[File endorsement omitted]

[fol. 219] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER PERMITTING APPEAL IN FORMA PAUPERIS—Filed Oct. 31, 1941

Upon the application and affidavit by appellant for permission to prosecute the appeal in the above styled case to the United States Circuit Court of Appeals, Fifth Circuit, in forma pauperis, and it appearing to the Court that the appeal is taken in good faith but that because of affiant's poverty he is unable to pay the costs of the appeal and unable to give security for same, it is ordered that appellant be and is hereby permitted to prosecute said appeal in forma pauperis.

The Clerk of this Court is directed to request a withdrawal of the transcript from the Circuit Court of Appeals and to make and transmit three copies of the transcript in accordance with Rule 10, Section 2.

Done this October 31st, 1941.

C. B. Kennamer, United States District Judge.

[File endorsement omitted].

[fol. 220] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE RECORD—Filed Dec. 8, 1941

It appearing to the Court that it will be impossible for the Clerk of the Court to finish the preparation of the transcript of this record,

It is, therefore, ordered that an additional ten days' time be allowed for the filing of the record of this case on appeal.

This the 8th day of December, 1941.

C. B. Kennamer, United States District Judge.

[fol. 221] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 222] IN UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT

No. 10119

JAMES LANIER BELL

versus

PREFERRED LIFE ASSURANCE SOCIETY OF MONTGOMERY, ALA-
BAMA, et al.

ARGUMENT AND SUBMISSION—October 20, 1942

On this day this cause was called, and, after argument by Robert T. Milner, Esq., and Fred S. Ball, Jr., Esq., for appellant, and Richard T. Rives, Esq., for appellees, was submitted to the Court.

[fol. 223] IN THE UNITED STATES CIRCUIT COURT OF AP-
PEALS FOR THE FIFTH CIRCUIT

No. 10119

JAMES LANIER BELL, Appellant,

versus

PREFERRED LIFE ASSURANCE SOCIETY OF MONTGOMERY, ALA-
BAMA, et al., Appellees

IN FORMA PAUPERIS

Appeal from the District Court of the United States for
the Middle District of Alabama

Before Hutcheson, Holmes, and McCord, Circuit Judges

OPINION—Filed November 18, 1942

HUTCHESON, Circuit Judge:

Brought by a single plaintiff, the holder of a contingent endowment insurance certificate of a maximum value of \$1000.00, against the Preferred Life Assurance Society, an insurance corporation, and its officers and agents, the suit was not brought as a class action under Rule 23(a) or (b),¹ but as a suit by plaintiff on his own behalf. The claim was; that the officers named as defendants were guilty of various frauds in the management and [fol. 224] operation of the defendant Society, among them, as to plaintiff, a fraud of misrepresentation as to the number of members in his division and as to the time his certificate would mature; that the income of the Society was large and that it was being diverted and mismanaged, the moneys going to excessive salaries and misappropriations by the officer defendants. The prayer was for a reformation of his certificate to an ordinary certificate of whole life insurance, for damages, actual and punitive, in the sum of Two Hundred Thousand Dollars (\$200,000.00), for the displacement of the officers, directors and trustees

¹ Rule 23 Federal Rules Civil Procedure, Title 28, Sec. 723(c), page 523.

of the Society, and the appointment of a receiver to take charge of the Society's assets and for a money judgment against each of the officers, directors and trustees for such sums as shall be found justly due and owing from each of the officers, directors and trustees to the Society. Jurisdiction was based on a claim of diversity and the allegation "this action is brought to reorganize the Insurance Department of the defendant Preferred Life Assurance Society, and to displace its present officers and directors and trustees and for damages. The insurance assets of Preferred Life Assurance Society exceed \$1,000,000.00, and the amount in controversy exceeds \$3000.00, exclusive of interest and costs." The defendant denied that the amount in controversy, exclusive of interest and costs, exceeds \$3000.00, and averred; that the only financial interest or claim which the plaintiff has against the defendants is represented by his contingent endowment insurance certificate upon which plaintiff has paid to the defendant an aggregate total of dues of only \$202.35; that, in no event, would plaintiff be entitled to recover from defendants a greater sum than \$1000.00; and that the claim for damages stated in the complaint is entirely colorable. In addition defendants denying, joined issue with, all plaintiff's charges of fraud and mismanagement. Depositions of certain of the officers were taken, and, the district judge of the opinion on the pleadings and the facts established by them and by the [fol. 225] depositions, that since under plaintiff's certificate, he could never have been, or be, entitled to a sum greater than \$1000.00, his claims for damages were merely colorable, and that the suit was an individual suit and not a class suit under Rule 23, dismissed the cause for want of jurisdiction.

Plaintiff, here complaining of the dismissal, rather feebly insists that his claim for \$200,000.00 damages personally sustained by him on account of his \$1000.00 certificate was not colorable. He puts his main insistence though on the ground that the suit properly understood was not an individual suit for damages sustained by himself but a suit in the nature of a derivative action by a member to enforce a claim in favor of the Society against its officers and directors for fraudulent and corrupt misappropriation of the Society's assets, wherein there is sought for the

benefit of the Society a money judgment exceeding \$3000.00, exclusive of interest and costs, and that the real matter in controversy was the value of the property of the Society and of the damage done to it and not the damage done to him on his \$1000.00 certificate.

We are in no doubt that plaintiff's claim of \$200,000.00 damages to himself on his \$1000.00 certificate was entirely colorable for the purpose of conferring jurisdiction. *St. Paul Indem. Co. v. Cab Co.*, 303 U. S. 289. The complaint contains not a single allegation of fact on which a judgment for damages claimed in excess of the value of his certificate could possibly be awarded. It is legally inconceivable that a person holding a certificate representing a claim for money which could not at the most bring him more than \$1000.00, could be entitled to a judgment for damages on account of being induced to purchase the certificate by representations that it was worth \$1000.00, when in fact it was worth less. Appellant's other point, that the suit should be considered as a class suit with the amount in controversy the value of, and the injuries to, the proper-[fol. 226] ties owned by the class, is equally without merit. For whatever might be said of plaintiff's right to bring a class suit under Rule 23, if he had elected to do so, he did not bring such a suit, and in view of the definite requirements of that rule, a court, in the absence of any attempt by plaintiff to comply with it, will not, indeed cannot, by in effect, rewriting his petition for him, convert the suit which he brought as an individual suit and on his own behalf into a class suit, on behalf of the Society. The announced purpose of the Federal Rules of Civil Procedure is to make pleadings simple and intelligible, and practice and procedure under them conducive to the speedy and sure attainment of just results, and the rules are so drawn that conformity with them will give effect to this purpose. In order to achieve the results intended by particular rules, while there should not be slavish, there should be substantial compliance with them, and a suit brought as an individual and not as a class action, without any regard to, or attempted compliance with, Rule 23, may not, in order to confer jurisdiction on the court, be construed as a class suit. The dismissal was, of course, without prejudice to the right of plaintiff to try again in the State Court or the Federal

Court, as he may be advised, and whether if he tries again he might make a case under Rule 23, is not before us for decision. What the district judge decided and what we decide is only that, as brought, as an individual suit by plaintiff on his own behalf, the amount in controversy was not within the jurisdiction of the court. The judgment was right. It is

Affirmed.

[fols. 227-228] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 10119

JAMES LANIER BELL

versus

PREFERRED LIFE ASSURANCE SOCIETY OF MONTGOMERY, ALABAMA, et al.

JUDGMENT—November 18, 1942

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Middle District of Alabama, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 229] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 19, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy¹ of the transcript of the proceedings below which accompanied

the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 47,250. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 749. James Lanier Bell, Petitioner, vs. Preferred Life Assurance Society of Montgomery, Alabama, et al. Petition for a writ of certiorari and exhibit thereto. Filed February 18, 1943. Term No. 749 O. T. 1942.

(6729)

FILE COPY

SEP 30 1943

CHARLES ELMORE DROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1943

No. 17

JAMES LANIER BELL,

Petitioner,

vs.

**PREFERRED LIFE ASSURANCE SOCIETY OF
MONTGOMERY, ALABAMA, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.**

BRIEF FOR PETITIONER.

✓ **WARREN E. MILLER,**
Washington, D. C.;
✓ **R. K. WISE,**
Columbia, S. Carolina;
R. T. MILNER,
Wetumpka, Ala.;
FRED BALL, JR.,
Montgomery, Ala.;
R. B. BARNES,
Birmingham, Ala.;
W. H. BRANTLEY, JR.,
Birmingham, Ala.,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 17

JAMES LANIER BELL,

vs.

Petitioner,

**PREFERRED LIFE ASSURANCE SOCIETY OF
MONTGOMERY, ALABAMA, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.**

BRIEF FOR PETITIONER.

Opinions Below.

The District Court's opinion appears on pages 165-168 of the record. The opinion of the Circuit Court of Appeals (R. 171-176) is reported in 131 Fed. (2d) 516.

Question Presented:

Whether the judgment of the Circuit Court of Appeals was correct in holding that the Court was without jurisdiction of the subject matter of this suit.

Statement.

The District Court in a preliminary hearing on the question of jurisdiction, before trial, considered the amended complaint (R. 133-147) and dismissed this suit upon the ground that the amended complaint failed to state a claim upon which relief, within the jurisdiction of the Court, could be granted.

The Circuit Court of Appeals held (R. 173-176) that this suit was not a class suit but was an individual suit by petitioner in his own behalf only, and affirmed the dismissal for want of jurisdiction, assigning as its reason that the amount in controversy was not within the jurisdiction of the Court.

Petitioner, a citizen and resident of South Carolina, sues respondent, Preferred Life Assurance Society, a corporation organized under the Fraternal Benefit Statutes of Alabama (R. 133) and its officers, directors, and trustees (R. 134-135), residents of Alabama, alleging fraud, mismanagement, unlawful enrichment of certain officers from the trust funds of the Society, seeks to oust the present officers, directors, and trustees and to displace them by competent persons and demands, on behalf of the Society and its members, actual and punitive damages against the officers of \$200,000, requests the appointment of a receiver to take charge of and conserve the trust assets of the Society.

The amended complaint avers the Society's assets exceed \$1,000,000 and the amount in controversy exceeds \$3,000, exclusive of interest and costs.

The Society writes a form of insurance known as "Contingent Endowment Insurance" under a plan whereby (R. 136) all members of the Society are supposed to be divided into groups, called "divisions," each consisting of twenty-five (25) members of the same entry age; in each division

each member is given a position numbered from one (1) to twenty-five (25). When a death occurs in any division the dead member's beneficiary receives the face amount of the dead member's insurance as a death claim, and the living member in good standing in the same division who holds the lowest position collects the face amount of his own insurance as a living-claim, and his certificate is forthwith cancelled. By reason of this contingency of collecting the face amount of insurance while still alive, after no fixed period of time, this form of insurance commands premiums much higher than ordinary insurance.

From the standpoint of the probability of collecting the insurance while the policyholder is still alive, the essence of the contract is that there be at all times twenty-five (25) members in each division. The Society by its contract binds itself to at all times keep and maintain each division at a strength of twenty-five (25) members.

The amended complaint avers on November 10, 1934 (R. 137) respondents' agent solicited petitioner to apply for a certificate of Contingent Endowment Insurance, representing that petitioner would have No. five (5) position in his division; that petitioner would "collect in two (2) years easy"; that "we will fill this group before we start another one"; and that there would be twenty-five (25) members in petitioner's division; and the respondents' agent represented to petitioner that petitioner's division would be completely filled before any memberships were sold in any other divisions of petitioner's age class.

The amended complaint avers that all of these representations, except as to the position offered petitioner in his division were false, were known to be false when made, and uttered with a reckless disregard for the truth. However, petitioner believed these representations to be true, and relying upon them, applied for a certificate of Contingent Endowment Insurance which he would not have applied for

except for such false representations, and respondents issued petitioner a certificate, which petitioner accepted, and upon which he paid premiums in the belief that twenty-five (25) members existed in his division at all times until January, 1940, when petitioner learned that instead of there being twenty-five (25) members in his division, there were only ten (10).

Respondents have never (R. 138) had twenty-five (25) members in any division; have never sold a position number higher than eleven (11); and have no reasonable expectation of ever filling any division, have no intention of so doing, having opened a total of one thousand four hundred fifty-six (1,456) divisions with one thousand four hundred fifty-four (1,454) divisions now open, all of these divisions having been opened prior to July 30, 1931, and long before respondents solicited petitioner to apply for insurance. As of December 31, 1940, respondents' Society had ten thousand two hundred forty-one (10,241) members.

Respondents have made no effort to fill petitioner's division although selling insurance in other divisions at petitioner's entry age. By reason of respondents' breach of their contract, petitioner has been damaged in his opportunity to collect while living on his certificate because it will take years longer for his certificate to mature with only ten (10) members in his division than if there were twenty-five (25) members.

The Society (R. 140) was organized August 28, 1928, as a Fraternal Benefit Society, without capital stock, under the laws of Alabama, and was organized and carried on for the benefit and profit of the respondents, Joseph E. Justice, Spencer H. Longshore and M. M. Longshore, Justice (R. 141) having received approximately \$132,000 from the Society over a period of ten (10) years, Spencer H. Longshore having received approximately \$339,095 since the Society was organized in 1928, and M. M. Longshore having

received approximately \$29,429 from the time of organization until December 15, 1939, these three (3) persons having received approximately \$492,521 as of December 31, 1940, or approximately 82.60% of the total claims paid to members over this period.

W. Guy Longshore organized (R. 138) another insurance company in 1936 known as "First National Assurance Society of Atlanta, Georgia," which company writes Contingent Endowment Insurance in competition with the respondent, Preferred Life Assurance Society, W. Guy Longshore continuing as a trustee of Preferred Society and at the same time serving as General Manager of the First National Life Assurance Society with an overwriting contract with that Society, which has a policy list of the Preferred Society, by the use of which list the First National Life Assurance Society has sold more than \$500,000 of Contingent Insurance, obtaining business by being able to offer lower position numbers to prospective policyholders than they hold in the Preferred Society. Members of the selling staff of the Preferred Society have taken positions with the First National Society. The respondents, it is averred, have largely abandoned efforts to fill divisions in the State of Georgia, having concentrated on persuading members and non-members of Preferred Society to purchase Contingent Endowment Insurance with First National Society, thereby causing members of the Preferred Society to cease paying premiums in the Preferred Society in order to purchase insurance with the First National Society, this action constituting fraud on petitioner *and all other members of Preferred Society.* (Italics supplied.)

Preferred Society's total income (R. 141) to December 31, 1940, has been approximately \$4,128,313 and disbursed in claims over this period approximates \$600,185, or approximately 14.55% of its total income.

Petitioner (R. 142) was not informed of the fraternal nature of the Society until 1939 when he began to receive notices of Lodge meetings, there having been no Lodges in existence prior thereto, and no Lodge meetings were held or pretended to be held until 1940, although the Society was chartered in 1928 as a fraternal order.

The Supreme Lodge Meeting in January, 1940 (R. 143) was sham and pretensive in that it neither elected officers and directors nor took other action as to the policy and management of the Society. All elections of directors, trustees and officers have been without the sanction of the Supreme Lodge Meeting (as required by Title 28, Par. 169 (8441) of the Alabama Statutes), (Appendix p. 40).

The overwriting or management contract of Spencer H. Longshore is fraudulent and void, having been entered into without the knowledge, consent, or approval of the Society's membership; and the respondents, Justice, Spencer H. Longshore, M. M. Longshore and W. Guy Longshore, the active officers, directors, trustees and agents of Preferred Life Assurance Society operated for their own personal benefit and not for the benefit of its members, receiving exorbitant salaries and commissions which have made them wealthy while the members have not received dividends. Respondents deprived petitioner *and other members* of the opportunity to attend Lodge meetings and vote on the officers of the Society and deprived them of control over the actions of such officers. (Italics supplied.)

Respondents (R. 144) did not require petitioner or a great majority of applicants to undergo physical or medical examination when applying for insurance or any other time, as required by the laws of the State of South Carolina, and as a result thereof poor physical risks became members of the Society to the prejudice of petitioner *and all other members* in good health. (Italics supplied.)

This alleged insurance is an illegal lottery, constitutes an illegal scheme to defraud and is a "wagering contract" in that it gives an interest in the lives of persons in whom no insurable interest exists.

Respondents have breached their contract with petitioner *and all other members* by not filling or endeavoring to fill the Society's divisions and have defrauded petitioner *and other members* of the Society by taking the members' money without disclosing this fact (R. 145) thus giving petitioner a right to vindictive damages (under the laws of the States of Alabama and South Carolina). (Italics supplied.)

Petitioner's certificate is in full force and effect and he is interested in having the funds of the Society properly and economically administered; respondents, by reason of the fraud and wrongs perpetrated *upon the Society and petitioner and the other members of the Society*, are not fit, proper or competent persons to be entrusted with the management of the insurance of the Society and petitioner is entitled to have them displaced as officers, directors and trustees and to have a receiver appointed to reorganize the Society, preserve its funds for the petitioner and *the other members of the Society*, which funds are a trust fund for the benefit of petitioner and *the other members of the Society*; and petitioner is entitled to a money judgment against the respondents in such sum as may be found upon an accounting *said judgment being for the benefit of the Society and its members*, for the fraudulent and wrongful conduct of said respondents; and petitioner is entitled to have his certificate reformed (R. 146), actual and punitive damages of \$200,000 being claimed, and petitioner is entitled to relief by the court for the reason that any attempt to obtain relief within the Society would be futile. (Italics supplied.)

Petitioner asks that the respondent be replaced by other officers, directors and trustees who will be fit and suitable

and regularly elected by the members of the Society, asks a money judgment against each of said officers, directors and trustees in the amount owing from them *to the Society*, and asks that a receiver be appointed to take charge of and conserve the trustee assets, and to reorganize the Society (R. 145). (Italics supplied.)

Summary of Argument.

POINT ONE.

This is a class suit instituted by petitioner for the benefit of himself and all others similarly situated.

POINT TWO.

The amount in controversy was within the jurisdiction of the court.

POINT THREE.

The contracts upon which premiums have been paid to create this trust fund were wagering contracts, no insurable interest existing between the policyholders, and therefore contrary to public policy and void.

POINT FOUR.

Upon the facts pleaded, property rights being involved, equity will intervene and the Court should appoint a receiver to take charge of this trust fund of well over a million dollars, now being dissipated, in order that it may be preserved and not wasted; and for the purpose of reorganization.

POINT FIVE.

The action of the court below was contrary to the Act authorizing the New Rules of Civil Procedure and Rules of Civil Procedure 8 (e) (2), 23 (a), and 23 (b), and Rule 18.

ARGUMENT.

POINT ONE.

This is a class suit instituted by petitioner for the benefit of himself and all others similarly situated.

Petitioner is suing the officers, directors and trustees on behalf of the Society and other members similarly situated to recover a substantial sum of money which these parties have appropriated to themselves without authority of law.

The amended complaint shows that these respondents have been systematically diverting to themselves money properly belonging to the fund which they are administering. Therefore, Preferred Life Assurance Society and its members, including petitioner, have a claim against these officers and directors for such of its assets as have been improperly diverted to themselves. Whether, by reason of their breach of trust they have forfeited their right to compensation must necessarily await an accounting, but clearly the facts as pleaded demonstrate the existence of the claims against these persons.

When, on final hearing at a trial of this cause, it will be demonstrated that these officers, directors and trustees are unfit to manage the Society, the Court will remove these persons, and appoint a receiver of the assets and then displace these persons who were never duly elected, by regularly elected, competent persons.

No claim has yet accrued to petitioner under the terms of his contract because he is still living and in position number four (4) in his class or division. Therefore, he has no *present* claim for any particular amount of money but he does have the right to have his interest in the entire trust fund of well over a million dollars preserved.

Under the Provisions of Section 8485 of the Alabama Code (1923) (Appendix page 41), all the members of the

Society may be required to pay additional assessments in the event the trust fund becomes exhausted. Therefore, at some future date this petitioner, and all other members of the Society, if the trust funds are all wasted, may become liable for a contribution to pay claims.

Section 8444 of the Alabama Code (1923) (Appendix Page 40) provides for extended insurance or paid-up protection when a sufficient reserve has been accumulated with which to pay for it. It will thus be seen that petitioner and the other members of the Society similarly circumstanced have the right to extended or paid-up protection when there is a sufficient reserve accumulated with which to pay for these additional benefits. The money recovered from these officers will make it possible for additional benefits to inure to the benefit of petitioner and the other members.

If these officers are required to replace the money which they have illegally taken from the trust fund, not only will each of the 10,241 members (R. 138) of the Society similarly circumstanced as petitioner benefit, but it would undoubtedly be possible under a reorganization as is sought here, for the Society to convert into a mutual company under Title 26, Section 236 *et seq.* of the Alabama Code, a substantial reserve having been built up for the protection of petitioners and the other members from which they would eventually receive substantial dividends.

A fair reading of this amended complaint clearly shows that it is more than "an individual suit by petitioner on his own behalf" as was held by the Circuit Court of Appeals when it affirmed the action of the trial court, dismissing the suit prior to trial solely upon the basis of the allegations contained in the amended complaint.

The amended complaint avers (R. 143) that respondents have deprived petitioner *and all other members* of their opportunity to attend Lodge meetings, elect and control

the officers of the Society; asks that a receiver be appointed to reorganize the Society, preserve its funds for the benefit of petitioner *and the other members of the Society*, and for judgment for the benefit of *the Society and its members* because of the fraud and wrongs perpetrated upon *the Society*, upon petition *and upon the other members of the Society* (R. 145); and to preserve the funds for the plaintiff *and the other members of the Society*; and for a money judgment against the officers, directors and trustees in the amount found by an accounting in this suit to be owing from them *to the Society*. (Italics supplied.)

It will thus be seen that the amended complaint here by its language clearly shows that this suit is a class suit, both in the specific allegations made and in the prayer for relief. The amended complaint shows that the most important purpose of the suit is for the protection and preservation of the property rights of petitioners and others holding identical policies and similarly circumstanced in a trust fund which is being threatened, depleted and dissipated fraudulently to the irreparable damage of the policyholders having an interest in such fund. They all have a community of interest in this trust fund which was established by the premiums paid by them to the Society; and they each have a common title to the fund here in litigation.

Paragraph 26 of the amended complaint (R. 145) avers that by reason of the fraud and wrongs which the respondents "have perpetrated upon the Society" they are not proper persons to be entrusted with the management of the insurance feature of the Society and they should be displaced as officers, directors and trustees and replaced by fit, competent and suitable persons, regularly elected by the members of the Preferred Life Assurance Society. These respondents were not so elected but usurped the offices which they hold.

The relief prayed for shows that this petitioner is one "as will fairly insure the adequate representation of all" persons in this same class as prescribed by Rule 23 (a); and that "the character of the right sought to be enforced for . . . the class is several" and that here "there is a common question of law and fact affecting the several rights and a common relief is sought," as prescribed by Rule 23 (a) (3) of the Rules of Civil Procedure.

The case of *Boesenberg v. Chicago Title & Trust Co.*, 128 F. (2d) 245, (C. C. A. 7), was a case directly in point with the instant suit, where suit was instituted by a representative of a class, beneficiaries of a trust estate in which it was averred that the trustees had been guilty of malfeasance and apparently paid excessive compensation to certain individuals, the relief being sought being restraint of the trustees from further wrongful action, lodgment of the trust estate in a receiver to be appointed by the court, determination of the amount due the estate and its restoration to the fund. In that case, the petitioner's proportionate interest was less than \$3,000.00. There, the District Court, believing they had a suit to recover individual amounts due petitioner, dismissed the suit on the ground that the sum due petitioner was less than the requisite amount. The Circuit Court of Appeals reversed, holding that the jurisdiction is tested by the value of the object sought to be gained by the suit, holding that it was apparent that the subject of the controversy was the protection, preservation and administration of a trust estate worth far more than \$3,000.00. That court held:

"Inasmuch therefore as plaintiff sought to have the court take jurisdiction of a trust fund aggregating more than \$70,000 in value; to have restored to that fund sums aggregating some \$30,000 alleged to have been wrongfully diverted and to have the estate administered in court, it is apparent that the subject

of controversy was not the recovery of plaintiff's interest in the trust fund but the protection, preservation and administration of a trust estate worth far more than \$3,000, under the well known powers of a court of equity. Such is a true class suit, which may be maintained by "one or more" of the class, Rule 23, Rules of Civil Procedure, 28 U. S. C. A. following section 723c; *United States v. 'Old Settlers'*, 148 U. S. 427, 13 S. Ct. 650, 37 L. Ed. 509; *Weeks v. Bareco Oil Co.*, 7 Cir., 125 F. 2d 84."

The action of the Court below was contrary to this decision of the Seventh Circuit Court of Appeals.

Paragraph 15 (R. 171) of the amended complaint filed herein shows that the respondent Society had 10,241 members as of December 31, 1940. This shows that the "persons constituting a class are so numerous as to make it impracticable to bring them all before the court" (as stated in Rule 23 (a)); and the relief herein prayed for shows that this petitioner is one who will "fairly insure the adequate representation of all" and that "the character of the right sought to be enforced for . . . the class is several," "and there is common question of law or fact affecting the several rights and a common relief is sought," all as permitted by Rule 23 (a) of the Rules of Civil Procedure.

Paragraph 26 of the amended complaint (R. 178) shows that petitioner is seeking to have a receiver appointed to reorganize the Society and preserve its assets for petitioner and other members of the Society, and states:

" . . . by reason of the fraud and wrongs which they (the respondents) have perpetrated upon the Society, as hereinabove set forth, are not fit, proper or competent persons to be entrusted with the management of the insurance feature of the Society; and plaintiff is entitled to have them displaced as officers, directors and trustees, and replaced by fit, competent and

suitable persons and, in the meantime is entitled to have a receiver to reorganize the Society, to take charge of the insurance department of the Society, and preserve the funds of the same for the benefit of plaintiff *and the other members of said Society, said funds being a trust fund for the benefit of plaintiff and the other members of the Society*; and plaintiff is further entitled to a money judgment against the defendant officers, directors and trustees, and each of them in such sum of money as may be found proper and just upon an accounting being had of said officers, directors and trustees, *said judgment being for the benefit of the Society and its members*, for the fraudulent and wrongful conduct of its officers, directors and trustees." (Italics supplied.)

The amended complaint (R. 179) asks judgment:

1. For damages in the sum of Two Hundred Thousand (\$200,000.00) Dollars.
2. That the respondent officers, directors and trustees be displaced by others who will be fit and suitable and regularly elected *by the members of Preferred Life Assurance Society*. (Italics supplied.)
3. That a receiver be appointed to take charge of and conserve the assets of the insurance department of said Society, the same being trust assets.
4. For a money judgment against each of said officers, directors and trustees in such sum, or sums, as shall be found to be justly due and owing from each of said officers, directors and trustees *to the Society*.
5. For the costs and disbursements of this action.

In Dean Clark's discussion of Rule 23 (b), at page 73 of the Washington Institute Proceedings on the Federal Rules of Civil Procedure, the following appears:

"Here is another question: 'Is it permissible to join in a stockholders' suit an individual claim of the plaintiff-stockholder against the corporation?' There is

considerable explanation of a particular situation but I will mention it generally because the answer, so far as I can see is, 'Why not!' The provision for the stockholders' suit in Rule 23 (b) is a rather specialized case which, of course, goes back to the equity rule. Even though that is a specialized case, our general rule of unlimited joinder could apply. The only limitation in the joinder of parties is that of the common question of law or fact. The rules of practically unlimited joinder would, I think, permit the joinder here."

The action of the Court below is not only contrary to these Rules of Civil Procedure, but also contravenes the organic statute authorizing said Rules¹ as the Court below has clearly abridged and denied petitioner's substantive rights.

Clearly, this is a class suit in addition to being an individual suit by the petitioner Rule 8 (e) (2) permits alternate claims in one count as this was pleaded.² If one of such statements, made independently, is sufficient, the pleading is certainly not made insufficient by the other statement. Further, the amended complaint here adequately sets forth a secondary action by a shareholder under Rule 23 (b) of the Rules of Civil Procedure.³

¹ Act of June 19, 1934, c. 651, par. 2, 48 Stat. 1064, U. S. C. A. Title 28, par. 723b, 723c, which provides: "• • • said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant."

² Rule 8 (e) (2) provides: "A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. • • •"

³ Rule 23 (b) provides: "In an action brought to enforce a secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refuses to enforce rights which may properly be asserted by it, the complaint shall be

Petition avers (R. 146) that any attempt to obtain relief within the Society would be futile, and otherwise brings this action within the requirements of Rule 23 (b). There is most assuredly no collusion, for the defendant officers and trustees cannot by the wildest flight of fancy be supposed to have conspired with petitioner to bring suit on behalf of the Society against themselves, and the same is true with regard to no demand having been made. Circumstances as well as direct allegation can demonstrate that there is no collusion and that a demand would be futile. It was well said in the strikingly similar case of *Haynes v. Fraternal Aid Union* (D. C. Kan., 1929), 34 F. 2d 305, 308, where petitioners demanded an accounting from certain officers and directors of a fraternal benefit society who were alleged to be using the Society's assets for their own benefit:

"Objection is made because the plaintiffs did not apply to the directors and ask them to have the corporation sue themselves. Such a demand, being manifestly useless, is unnecessary. The directors cannot be both plaintiffs and defendants, nor defendants and judges." 34 F. 2d 305 at 308.

It is thus apparent that petitioner has brought himself within all the requirements of Rule 23 (b).

Rule 23 (b) by its terms applied only to a suit by a shareholder against a corporation in which he owns stock, a situation where the fiduciary relationship between the stockholder and the directors is less marked. Petitioner and

verified by oath and shall aver (1) that the plaintiff was a shareholder at the time of the transaction of which he complains or that his share thereafter devolved on him by operation of law and (2) that the action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction. The complaint shall also set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as he desires, and the reasons for his failure to obtain such action or the reasons for not making such effort."

other members of the Society are *cestuis que trustent*; and in Alabama the corporate entity of a fraternal benefit society such as this is but another name for a trust fund. Therefore, we think that Rule 23 (b) is not applicable under the circumstances in this case merely because this trust fund has a corporate name and entity.

The court below ignored the applicable provisions of Rules 8 (e) (2)⁴ 23 (a);⁵ and 23 (b)⁶; and its decision was contrary to the organic statute creating these Rules.⁶

Further, under Rule 18, Rules of Civil Procedure,⁷ a complaint may contain as many independent or alternate claims as one may have against a party.

POINT TWO.

The amount in controversy was within the jurisdiction of the court.

The amount in controversy includes the \$200,000 punitive damages, which are allowable by the law of Alabama as well as by the law of South Carolina.

⁴ See footnote 2, page 12.

⁵ Rule 23 (a) provides: "If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

⁶ See footnote 1, page 12.

⁷ Rule 18. Joinder of Claims and Remedies. (a) Joinder of Claims. The plaintiff in his complaint or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party.

Whenever there is a gross fraud, or an actual intent to deceive, the better authorities permit the recovery of punitive damages in tort actions for fraud and deceit, and such is the law both in Alabama and in South Carolina. *Southern Bldg. & Loan Assn. v. Bryant* (1932), 225 Ala. 527, 144 So. 367; *Southern Bldg. & Loan Assn. v. Dinsmore* (1932), 225 Ala. 550, 144 So. 21; *Fidelity-Phenix Fire Ins. Co. v. Murphy* (1933), 226 Ala. 226, 146 So. 387; *Cartwright v. Hughes* (1933), 226 Ala. 464, 147 So. 399; *Crosby v. Metropolitan Life Ins. Co.* (1932), 167 S. C. 253, 166 S. E. 266; *Cook v. Metropolitan Life Ins. Co.* (1938), 186 S. C. 77, 194 S. E. 636 *supra*. In the case at bar there is a very gross fraud practiced upon petitioner with actual intent to deceive him, and his claim for punitive damages is maintainable in the Courts both of Alabama and of South Carolina. In such case, the punitive damages are added to the actual damages to make up the jurisdictional amount. *Young v. Main* (8 Cir., 1934), 72 F. 2d 640; *Greene v. Keithley* (8 Cir., 1937), 86 F. 2d 238. The Court below, in failing to consider punitive damages, was in error.

In the case of *St. Paul Indemnity Co. v. Cab Company*, 303 U. S. 289, cited by the Circuit Court of Appeals (R. 175) as its authority to dismiss this action, this court, in holding that the petitioner there was entitled to invoke the jurisdiction of a Federal Court, at page 288 held:

"The rule governing dismissal for want of jurisdiction in cases brought in the federal court is that, unless the law gives a different rule, the sum claimed by the plaintiff controls (citing *Wilson v. Daniel*, 3 Dall. 401, 407, 408; *Barry v. Edmunds*, 116 U. S. 550; *Sherman v. Clark*, 3 McLean 91, Fed. Cas. 12763; *Stuckert v. Alexander*, 4 F. Supp. 172) if the claim is apparently made in good faith (citing *Peeler v. Lathrop*, 48 Fed. 780; *Ung Lung Chung v. Holmes*, 98 Fed. 323; *Washington County v. Williams*, 111 Fed. 801; *Greene County Bank v. Teasdale Comm'n Co.*, 112 Fed. 801; *American Sheet*

& Tin Plate Co. v. Winzeler, 227 Fed. 321; *Owen M. Bruner Co. v. O. R. Manefee Lumber Co.*, 292 Fed. 985; *Walker Grain Co. v. Southwestern Tel. & Tel. Co.*, 10 F. (2d) 272). It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal."

The court below, we respectfully submit, misapplied the law as announced by this Court in the above decision, to the facts as set forth in the amended complaint filed in this case. There is no legal-certainty here that the claim is for less than the jurisdictional amount; and hence the courts below were wrong in dismissing this cause.

The jurisdictional amount is not in any case to be determined by the result of a finding or verdict or by the ultimate result of an accounting, but by the good faith and reasonableness of the allegation that over \$3,000 is involved. It is not the amount that petitioner is able to prove he is entitled to that determines the amount in dispute for the purpose of jurisdiction, for otherwise the failure of a petitioner to recover would oust the court of jurisdiction. The amount in dispute or the matter in controversy which determines the jurisdiction of the Circuit Court in suits for the recovery of money only, is the amount demanded by the petitioner in good faith." *Peeler v. Lathrop*, 48 Fed. 780, (C. C. A. 5th); *Gordon v. Longest*, 16 Pet. 97, 10 L. Ed. 900; *Smith v. Greenhow*, 109 U. S. 669, 27 L. Ed. 1080; *Barry v. Edmunds*, 116 U. S. 550, 29 L. Ed. 729; *Jones v. McCormick Harvesting Machine Co.*, 82 Fed. 295 (C. C. A. 7); *Central Commercial Co. v. Jones Dusenbury Co.*, 215 Fed. 13 (C. C. A. 7); *Operators' Piano Co. v. First Wisconsin Trust Co.*, 283 Fed. 904 (C. C. A. 7).

Even if the instant suit should be construed as one for money only, the Court already had jurisdiction, under the authority heretofore cited. It alleges facts authorizing other relief of which the Court has jurisdiction.

In a stockholder's derivative action to require the corporation to enforce a right existing in its favor, the amount in controversy is measured by the amount of the corporation's claim. *Haynes v. Fraternal Aid Union* (D. C. Kan., 1929), 34 F. 2d 305 and 308; *Johnson v. Ingersoll* (7 Cir., 1933), 63 F. 2d 86, at 87; *Marion Mtge Co. v. Edmunds* (5 Cir., 1933), 64 F. 2d 248 (at 252). In the case at bar the allegation is that respondent officers and directors have misappropriated to their own use funds of the Society amounting to several hundred thousand dollars, for which an accounting and money judgment is sought.

Petitioner became a member of the Society in November, 1934. The respondent Spencer H. Longshore has received from the Society monies aggregating \$128,000 during 1938, 1939 and 1940; and the respondents Joseph H. Justice and M. M. Longshore have each received more than \$3,000 since 1934. Even if the Court should not hear petitioner to complain of monies received by respondents prior to November, 1934, he can unquestionably complain of the continuance of conditions which first came into being prior to 1934, and there is in controversy a sum many times \$3,000 and received since 1934.

Petitioner's theory of the case, fully supported by his averments, is that respondents have, from the inception of the trust, breached their duty towards their *cestuis* in so many ways involving moral turpitude that they have forfeited all right to compensation. Hence the amount in controversy is the full amount received by respondents from Preferred, a matter of several hundred thousand dollars. Even if upon an accounting they should establish a right of reasonable compensation, so that the demand would fall below \$3,000 (an almost impossible situation if petitioner is able to prove any part of his charges), the jurisdiction is not defeated.

If the case be considered as one to require trustees to account, the rule is the same as where a right exists in favor of a corporation, for the amount in controversy is not petitioner's individual interest in the fund, but rather the amount in which the trustee is indebted to the fund. Thus, in either view, the amount in controversy in petitioner's third claim for relief far exceeds \$3,000, exclusive of interests and costs.

The amount in controversy is the amount of Preferred's assets, over one million (\$1,000,000) dollars. Petitioner has demonstrated that his amended complaint states a claim upon which relief can be granted for the reorganization of the Society, together with a temporary receiver to conserve its insurance assets pending such reorganization, because of the acts of the officers and directors in breach of their trust and in opposition to the interests of the *cestuis que trustent*. It remains only to show that the amount in controversy on that claim is measured by the insurance assets of the Society, the same constituting a trust fund brought into Court and exceeding \$1,000,000.

Damage to petitioner's individual right to have the Society's assets honestly administered enables him to bring the fund into Court, where any relief he may obtain will benefit all other members of the Society as well as petitioner himself. His action, then, is a true class action even though he does not formally allege that it is brought for the benefit of himself "and all others similarly situated." *Grand Lodge v. Shorter* (1931), 219 Ala., 293, 122 So. 36, *supra*; *Ex parte Rowley* (1942), 20 S. E. 2d 383.

The test of the amount in controversy is the value of the right to be protected,⁸ and the settled rule in class suits is that "the aggregate interests of the whole class and not

⁸ *McNutt v. General Motors Acceptance Corp.* (1936), 298 U. S. 178, at 181, 80 L. Ed. 1135, 56 S. Ct. 780, at 781, and citations therein; *Electro Therapy Products Co. v. Strong* (9 Cir., 1936), 84 F. 2d 766.

the several interests of each individual constitute the matter in dispute." *Local No. 7 of Bricklayers' Union v. Bowen* (D. C. Texas, 1922), 278 Fed. 271, at 272.

Petitioner's action is, as shown by the Alabama decisions above cited, a class suit. Application to his action of the principle that the amount in controversy is tested by the aggregate interests of the whole class demonstrates that the amount here in controversy exceeds \$1,000,000, since the class consists of all the members (more than 10,000) and their aggregate interest extends to the entire insurance assets of Preferred, such assets constituting the fund which petitioner desires to bring into Court.

Agreeably to the foregoing principles, it has been uniformly held that in an action by a stockholder seeking to administer the corporation's assets, the amount in controversy is the amount over which petitioner seeks to gain control—the entire assets of the corporation. *Towle v. Am. Bldg. Loan & Investment Soc.* (C. C. Ill., 1894), 60 Fed. 131; *Taylor v. Decatur Mineral & Land Co.* (C. C. Ala., 1901), 112 Fed. 449; *Klein v. Wilson & Co.*, (D. C. N. J. 1925), 7 F. 2d 772; *Kelly v. Alabama-Quenalda Graphite Co.* (D. C. Ala., 1929), 34 F. 2d 790; *King v. Kansas City Police Relief Ass'n* (D. C. Mo., 1932), 60 F. 2d 547. See, also, *Dill v. Supreme Lodge* (D. C. Mo., 1915), 226 Fed. 807, where it was apparently assumed that in a suit somewhat like the present one the amount in controversy was measured by the assets of the defendant, Supreme Lodge.

The decision of the court below is contrary to the decisions of the Eighth Circuit Court of Appeals in the cases of *Greene v. Keithley*, 86 F. (2d) 238 and *Young v. Main*, 72 F. (2d) 640, which cases held that exemplary damages may be added to actual damages to make up the federal jurisdictional amount where exemplary damages, as here, are permitted to be recovered.

The amended complaint alleges (R. 147) the Society's total income has been over four million dollars; that three officials, including a man and wife, received approximately \$492,000, which is 82.6 per cent of the total claims paid by the Society until December 31, 1940, and other defendants received from the Society other substantial amounts, all in excess of the statutory limitations. The sworn answers to interrogatories show an income of \$4,128,331.86 (R. 147) and that three officials actually received \$492,520.76 from the Society, Spencer H. Longshore and wife alone receiving \$368,523.41 (R. 147). Since 1936, Spencer H. Longshore has also been a trustee in the First National Life Assurance Society, a competitor.

In the case of *Young v. Main* (C. C. A. 8), 72 F. (2d) 640 (at page 643), the court said:

"It is true that exemplary damages may be added to actual damages to make up the federal jurisdictional amount where exemplary damages are permitted to be recovered, *Scott v. Donald*, 165 U. S. 58, 89, 17 S. Ct. 265, 41 L. Ed. 632; and exemplary damages may be allowed in actions on the case of conspiracy or deceit, *Alexander v. Staley*, 110 Iowa 607, 81 N. W. 803; *Day v. Woodworth*, 13 How. 363, 14 L. ed. 181, 17 C. J. 977."

In the case of *Greene v. Keithley*, 86 F. (2d) 238, at page 241, the court said:

"We think the proper rule is that exemplary damages may be recoverable in tort actions based upon conspiracy or deceit. In the leading case of *Day v. Woodworth*, 13 How. 363, 371, 14 L. ed. 181, the Supreme Court laid down the rule as follows: 'It is a well-established principle of the common law, that in actions of trespass and all actions on the case for torts, a jury may inflict what are called exemplary, punitive, or vindictive damages upon a defendant, having in view the enormity of his offense rather than the measure of

compensation to the plaintiff. This rule has not been qualified or limited, but has been followed consistently by the Supreme Court. *Scott v. Donald*, 165 U. S. 58, 88, 17 S. Ct. 265, 41 L. Ed. 632; *Lake Shore & M. S. Ry. Co. v. Prentice*, 147 U. S. 101, 107, 13 S. Ct. 261, 37 L. Ed. 97; *Denver & Rio Grande Railway Co. v. Harris*, 122 U. S. 597, 609, 7 S. Ct. 1286, 30 L. Ed. 1146; *Barry v. Edmunds*, 116 U. S. 550, 562, 6 S. Ct. 501, 29 L. Ed. 729. Actions in tort based on conspiracy or deceit are within this rule since they are actions on the case for torts.' "

The Preferred Life Assurance Society does not require its applicants before membership to undergo any physical or medical examination at the time insurance is applied for, and contrary to the provisions of the South Carolina statute which requires this. Thus poor physical risks become members of the Society to the prejudice of petitioner and to "*all other members in good health*" (R. 144), and the alleged insurance practice being followed is a scheme amounting to illegal lottery and constitutes an illegal and unlawful scheme to defraud, is also a wagering contract in that it attempts to give a beneficial interest to petitioner in the lives of the other members of his division in whom he has no insurable interest and as to whom he does not belong in the class of beneficiaries of fraternal beneficial insurance policies permitted by the statutes of the State of Alabama and South Carolina (R. 144). The Society has defrauded petitioner and the other members of the Society by continuing to accept their money without making disclosure that it was not endeavoring to fill the divisions of the Society.

In the instant case the amended complaint alleges that the Society was not organized "for the mutual benefit of its members and not for a profit" but that it was carried on for the particular benefit and profit of the respondents (R.

140-143); that it conducted its business contrary to the statutes of the State of South Carolina requiring medical examination and that three of the respondents conceived, put into operation and actively participated in and still participate in certain frauds.

The complaint also alleges facts showing deceit (R. 145) in addition to the above mentioned conspiracy.

It will thus be seen that the complaint alleges conspiracy, deceit and fraud and the decision of the Court below in the instant case is clearly contrary to the decision of the Seventh Circuit Court of Appeals in the case of *Boesenberg v. Chicago Title & Trust Co.*, 128 F. 2d 245, and is also contrary to the decisions of the Eighth Circuit Court of Appeals in the cases of *Young v. Main*, 72 F. 2d 640 and *Greene v. Keithley*, 86 F. 2d 238.

The action of the court below in not adding exemplary damages to actual damages to make up the federal jurisdictional amount of three thousand dollars where exemplary damages are permitted to be recovered, as was the case here under the decisions of the courts of Alabama and South Carolina,⁹ was contrary to the decision of this Court in the case of *Scott v. Donald*, 165 U. S. 58, 89, 17 S. Ct. 265, 41 L. Ed. 632.

The court below ignored the rule that exemplary damages may be recovered in tort actions based upon fraud, conspiracy or deceit as was announced by this court in *Day v. Woodworth*, 13 How. 363, 14 L. Ed. 187, wherein this Court said:

"It is a well-established principle of the common law, that in actions of trespass and all actions on the

⁹ *Southern Bldg. & Loan Assn. v. Bryant* (1932) 225 Ala. 527, 144 So. 367; *Southern Bldg. & Loan Assn. v. Dinsmore* (1932) 225 Ala. 550, 144 So. 21; *Fidelity-Phoenix Fire Ins. Co. v. Murphy* (1933), 226 Ala. 226, 146 So. 387; *Cartwright v. Hughes* (1933) 226 Ala. 464, 147 So. 399; *Crosby v. Metropolitan Life Ins. Co.* (1932) 167 S. C. 255, 166 S. E. 266; *Cook v. Metropolitan Life Ins. Co.* (1938) 186 S. C. 77, 194 S. E. 636.

case for torts, a jury may inflict what are called exemplary, punitive, or vindictive damages upon a defendant, having in view the enormity of his offense rather than the measure of compensation to the plaintiff."

This rule has not been qualified or limited but has been followed consistently by this court. *Scott v. Donald*, 165 U. S. 58, 88, 17 S. Ct. 265, 41 L. Ed. 632; *Lake Shore & M. S. R. Co. v. Prentice*, 147 U. S. 101, 107, 13 S. Ct. 261, 37 L. Ed. 97; *Denver & Rio Grande Railway Co. v. Harris*, 122 U. S. 597, 609, 7 S. Ct. 1286, 30 L. Ed. 1146; *Barry v. Edmunds*, 116 U. S. 550, 562, 6 S. Ct. 501, 29 L. Ed. 729.

In *Barry v. Edmunds*, 116 U. S. 550, it was held that a suit cannot properly be dismissed by a Circuit Court of the United States as not substantially involving a controversy within the jurisdiction of the court, unless the facts, where made to appear on the record, create a legal certainty of that conclusion; that where exemplary damages beyond the sum necessary to give a Circuit Court of the United States jurisdiction are claimed in an action for a malicious trespass, the Court should not dismiss the case for want of jurisdiction simply because the record shows that the actual injury caused to the petitioner by the trespass was less than the jurisdictional amount.

The inability of petitioner to recover an amount adequate to give the Court jurisdiction does not show his bad faith or oust the jurisdiction. *Smithers v. Smith*, 204 U. S. 632, 51 L. Ed. 636, 27 S. Ct. 297; *Holden v. Utah & M. Machinery Co. (C. C.)* 82 F. 209; *Maffet v. Quine (C. C.)* 95 F. 199; *Kunkel v. Brown (C. C. A. 4th)* 99 F. 593; *Ung Lung Chung v. Holmes (C. C.)* 98 F. 323, *supra*; *Washington County v. Williams (C. C. A. 8th)* 111 F. 801, *supra*; *Denver City Tramway Co. v. Nortop (C. C. A. 8th)* 141 F. 599; *Hampton Stave Co. v. Gardner (C. C. A. 8th)* 154 F. 805, *supra*; *O. J. Lewis Mercantile Co. v. Klepner (C. C. A. 2d)* 176 F. 343; *St. Tammany*

Bank & T. Co. v. Winfield (C. C. A. 5th) 263 F. 371; *Ragsdale v. Rudich* (C. C. A. 5th) 293 F. 182; *Walker Grain Co. v. Southwestern Teleg. & Teleph. Co.* (C. C. A. 5th) 10 F. (2d) 272, *Kimel v. Missouri State L. Ins. Co.* (C. C. A. 10th) 71 F. (2d) 921; *Simecek v. United States Nat. Bank* (C. C. A. 8th) 91 F. (2d) 214.

It will thus be clearly seen that the court below erred in holding the amount in controversy was not within the jurisdiction of the Court.

POINT THREE.

The contracts upon which premiums have been paid to create this trust fund were wagering contracts, no insurable interest existing between the policyholders, and therefore contrary to public policy and void.

The insurance involved here is similar to that in the following cases where several contracts were held to be wagering contracts: *Helmetag v. Miller*, 76 Ala. 183, 52 Amer. Rep. 316; *White v. Equitable N. Ben. Union*, 76 Ala. 251, 52 Am. Rep. 325; *Colgrove v. Lowe*, 343 Ill. 360, 175 N. E. 569; *Knott v. State ex rel: Guaranty Income Life Ins. Co.*, 136 Fla. 184, 186 So. 788, 121 A. L. R. 715; *Commercial Travelers' Insurance Company v. Carlson* (Utah Supreme Court, May 12, 1943), 137 Pac. (2d) 656; *Warnock v. Davis*, 104 U. S. 775, 26 L. Ed. 924; *Unity Life v. Beasley*, 64 Ga. App. 277.

The policies involved in the cases of *Knott v. State*, *supra*, and *Commercial Travelers' Insurance Company v. Carlson*, *supra*, were practically identical with the form of policies involved in this case.

In *Knott v. State*, *supra*, it was held that a "special endowment benefit" provision of an endowment policy was contrary to public policy as a wagering contract, since under such provision a policyholder would profit by the

death of other policyholders in his class, in whose lives he had no insurable interest. The provision in question was for payments in addition to the face amount payable on the death of the insured or upon his reaching a specified age; and was to the effect that all the policyholders of the same entry age to whom policies were issued in the same calendar year should constitute a special class, upon the death of any member of which, an amount equal to the face amount of such member's policy should be distributed among the surviving members of the class, including the beneficiary of such deceased member, in proportion to the face amount of their respective policies.

At the time the question was raised as to the form of policy involved in the Florida case of *Knott v. State*, *supra*, there was a statute in Florida practically the same as the statute of Alabama, giving to fraternal benefit societies the right to fix classes and provide benefits from special funds to the oldest member of the class upon death of another member, as the Court in its opinion states:

"We hold a wagering contract is against the public policy of the State of Florida despite Chapter 17947, Acts of 1937, giving to fraternal benefit societies the right to fix classes and provide benefits from special funds to the oldest member of the class upon death of another member."

In the case of *Commercial Travelers' Insurance Company v. Carlson* (Utah Supreme Court, May 12, 1943), 137 Pac. (2d) 656, the Court describes the policy involved as follows:

"The challenged policy form provides that respondent will pay the face amount thereof (A) To the insured upon the maturity of the policy as a mortality endowment as defined in the policy; or (B) to a named beneficiary upon the death of the insured before the maturity of the policy as a 'mortality endowment'. It also provides that if the stipulated premiums are paid for

a full twenty years' period prior to the maturity of the policy either as a 'mortality endowment' or by reason of death of the insured, the insured may surrender the policy and receive a fully paid-up policy for the face amount of the surrendered policy. In brief, the policy is the standard limited payment life insurance policy with the 'mortality endowment' feature. Consequently, the sole question presented is whether the inclusion of the last named feature of the policy justified the refusal by the Commissioner to authorize its issuance in this state.

The 'mortality endowment' provision is integrated with the other provisions. It is not added optionally by payment of an additional premium as in the case of double indemnity and disability provisions in the standard form of life insurance policies. One premium covers all of the insurance features and provisions. Each application for a 'Dual-Pay' policy is stamped with the day, hour and minute it is received at the home office of the company, and the policy is automatically classified into the age group of the applicant. Various divisions are established by the company for each age group, and there are 26 numbers in each of such divisions represented by the letters of the alphabet. For instance, the company assigns the first application to the first number or the 'A' position in the first division of the age group, and thereafter subsequent applications are assigned to the divisions containing the fewest number of policies until all the divisions are filled.

The 'mortality endowment' provision specifies that the 'policy shall mature as a mortality endowment and shall be payable when it becomes the oldest policy in force in its division and the company experiences a mortality loss under another policy in the same division'. For example, if in division 1 policyholder numbered B or any other letter other than A dies while his policy, as well as that of A, are in good standing, the face amount of the policy issued to B or such other person in the group who dies is paid to his beneficiary, and in addition thereto, A's policy being the 'oldest'

in that division immediately matures as a 'mortality endowment' and he is paid in cash the face amount of his policy even if he has paid only the first premium because the death of some other member of the group occurs before the second premium is due. The policy of A matures by the death of another in his division, and payment of the face amount thereof discharges the obligation of the insurer, and consequently A is no longer a policyholder after such payment. Upon B's death; A being eliminated by payment, C would move into the position of A, and other policies would be sold to fill up the group."

The Court further in its opinion says that it is conceded by respondents that the insured in a senior position in any division has no insurable interest in the life of an insured who occupies a junior position, but contend that such fact is wholly immaterial. The Court in answer to such contention states that there is this substantial and controlling difference:

"That No. 1 who holds the 'A' position, as hereinabove indicated, has paid an ascertainable premium in return for the promise of the insurer to pay a stipulated sum upon the death of another person in a group of which he is a member; and that No. 1 has no insurable interest in the life of such junior member of the group. The probabilities are that he may not even be acquainted with the one who dies. The mere fact that such a promise is denominated a 'mortality endowment' does not at all obscure the essence of this provision of the contract: A is the beneficiary of insurance on the life of another in which he has no insurable interest. This being so, we are confronted with a salutary rule, the following statement of which we approve: The 'almost universally accepted rule is that a party insuring a human life must have an insurable interest therein if the insurance is effected for his own benefit, or the policy will be void; and he must prove such interest in order to recover, since public policy does not permit

one having no insurable interest to procure a policy of insurance upon the life of a human being, and pay the premiums as a speculation, or on a chance of collecting the insurance money.' I. Couch, *Cyclopedia of Insurance Law*, Sec. 295, pages 769-770.

"It is true in one sense, as asserted by respondent, that the holder of the 'A' or No. 1 position in a group does not 'insure' the life of any other person. That is, the premium paid is not to assure him against a pecuniary loss occasioned by the death of another. Absent an insurable interest he could suffer no such loss by the death of such other person. To say that under the provision here considered, No. 1 'insures' the life of no one, merely serves to accentuate the gambling nature thereof and to emphasize that it does not constitute legitimate insurance.

"In another aspect, also, as pointed out by appellant, the issuance of this type of policy involves at the outset a kind of lottery. When an application therefor is received by the insurer, it is given an advantageous or disadvantageous position, depending on the number and automatic allocation of previously received applications. The applicant pays the charge made for the mortality endowment feature for the promise of the insurer to pay a stated sum upon the happening of the contingency provided for, plus the promise to assign the policy to that place of preference or disadvantage in a division which is determined by the fortuitous circumstance that in one of the divisions there is or is not a senior position unfilled."

The Court further states:

"In support of their contention that the 'Dual-Pay' policy does not offend against public policy as a wagering contract, respondent refers us to cases dealing with the tontine or semitontine plan of insurance. Under such plan no accumulations or earnings are credited to the policy unless it remains in force for the tontine period of a specified number of years. Thus, those who survive the period and keep their policies in force

share in the accumulated fund. Those who die or who permit their policies to lapse during the period do not, neither do their beneficiaries participate in such accumulations. See *Gouley v. Northwestern Nat. Life Ins. Co.* 94 Okl. 46, 220 P. 645; *Uhlman v. New York Life Ins. Co.* 109 N. Y. 421, 17 N. E. 363; *Pierce v. Equitable Life Assurance Society*, 145 Mass. 56, 12 N. E. 858; *Equitable Life Assurance Society v. Winn* 137 Ky. 641, 126 S. W. 153; and *United States Life Ins. Co. v. Spinks*, 126 Ky. 405, 103 S. W. 335.

“It is obvious that such a plan differs in essentials having a direct bearing on the wagering nature of the contract, from the policy here involved; (1) On issuance of a tontine policy no lottery feature is involved—no preferred position is accorded any policy holder. (2) The death of no policy holder is necessary in order that a survivor of the period shall share in the accumulated fund. (3) If any advantage accrues to the survivor because of the non-survival of another or others, thereby leaving fewer to share therein, such advantage accrues equally to all survivors, not only by virtue of having survived those deceased, but by virtue also of having survived as a policy holder to the end of the stipulated period.

“We conclude that the ‘mortality endowment’ provision of the ‘dual-pay’ policy for the reasons herein stated, is a wagering contract. See to the same effect, although dealing with insurance policies which differ in detail for the ‘Dual-Pay’ policy, *Colgrove v. Low* 343 Ill. 360, 175 N. E. 569; and *Knott v. State ex rel Guaranty Income Life Ins. Co.*, 136 Fla. 184, 186 So. 788, 121 A. L. R. 715. The Constitution of Utah, Art. VI, Sec. 28 provides: ‘The Legislature shall not authorize any game of chance, lottery or gift enterprise under any pretense or for any purpose’. In view of such declaration of public policy and in view of the fact that the wagering here involved is on human life, we are compelled to hold that the questioned provision is against public policy and that appellant’s action in refusing a permit for its issuance in this state, should

be upheld. See *State et al. v. Russel Inc.*, 101 Utah 89, 118 P. (2d) 679."

Mr. Justice Field, speaking for this Court in *Warnock v. Davis*, 104 U. S. 775, 26 L. Ed. 924, in which an assignment of the policy by an insured to one having no insurable interest was held to be a wagering contract and against public policy, says:

"The policy executed on the life of the deceased was a valid contract and as such was assignable by the assured to the Trust Association as security for any sums lent to him, or advanced for the premiums and assessments upon it. But it was not assignable to the Association for any other purpose. The Association had no insurable interest in the life of the deceased, and could not have taken out a policy in its own name. Such a policy would constitute what is termed a wager policy, or a mere speculative contract upon the life of the assured, with a direct interest in its early termination."

"It is not easy to define with precision what will in all cases constitute an insurable interest, so as to take the contract out of the class of wager policies. It may be stated generally, however, to be such an interest, arising from the relations of the party obtaining the insurance, either as creditor of or surety for the assured, or from the ties of blood or marriage to him, as will justify a reasonable expectation of advantage or benefit from the continuance of his life. It is not necessary that the expectation of advantage or benefit should be always capable of pecuniary estimation; for a parent has an insurable interest in the life of his child, and a child in the life of his parent, a husband in the life of his wife, and a wife in the life of her husband. The natural affection in cases of this kind is considered as more powerful—as operating more efficaciously—to protect the life of the insured than any other consideration. But in all cases there must be a reasonable ground, founded upon the relations of the parties to each other, either pecuniary or of blood or

affinity, to expect some benefit or advantage from the continuance of the life of the assured. Otherwise the contract is a mere wager, by which the party taking the policy is directly interested in the early death of the assured. Such policies have a tendency to create a desire for the event. They are, therefore, independently of any statute on the subject, condemned, as being against public policy."

The parties to a contract of insurance cannot even by a solemn agreement, override the public policy which requires the beneficiary to have an insurable interest.

In *Colgrove v. Lowe*, 343 Ill. 360 (certiorari denied, 284 U. S. 639) which was a case in which a certain number of persons take out life insurance on their own lives, designating the same trust company as a common beneficiary trustee, under an agreement whereby in the event of death within five years 25 per cent of the face amount of the insurance shall be divided for the benefit of such surviving parties to the contract as have kept their insurance in force, the remaining 75 per cent interest in the insurance to be paid to a designated beneficiary, in holding the contract was a wager upon the lives of others in whom the parties to be benefited had no insurable interest; the Court said (at page 363):

"Public policy has universally found expression in judicial decisions refusing to allow life insurance to be taken out in the first instance by persons having no interest in the life of the insured. In accordance with these decisions it has been uniformly held that a contract of insurance upon a life in which the insurer has no interest is a pure wager, that gives the insurer a sinister counter-interest in having the life come to an end. Mr. Justice Holmes in the case of *Grigsby v. Russell*, 222 U. S. 149, said: 'The very meaning of an insurable interest is an interest in having the life continue.' * * * Indeed, the ground of the objection to life insurance without interest, in the earlier English

cases, was not the temptation to murder but the fact that such wagers came to be regarded as a mischievous kind of gaming.' Public policy forbids one person who has no interest in the continuance of the life of another from speculating on that life by procuring a policy of insurance."

Although the policy under consideration in *Grigsby v. Russell*, *supra*, was valid when issued, and otherwise that case differed from this from a factual basis, the following language of this Court in that case is believed controlling here:

"A contract of insurance upon a life in which the insured has no interest is a pure wager that gives the insured a sinister counter-interest in having the life come to an end. And although that counter interest always exists, as early was emphasized for England in the famous case of *Wainwright (Janus Weathercock)*, the chance that in some cases it may prove a sufficient motive for crime is greatly enhanced if the whole world of the unscrupulous are free to bet on what life they choose. The very meaning of an insurable interest is an interest in having the life continue and so one that is opposed to crime. And, what perhaps is more important, the existence of such an interest makes a roughly selected class of persons who by their general relations with the person whose life is insured are less likely than criminals at large to attempt to compass his death."

An insurable interest was defined by the late Mr. Justice Bradley of this Court in *Conn. Mutual Life Insurance Co. v. Schaefer*, 94 U. S., 457, 460, 24 L. Ed. 251, as follows:

"It may be said generally that any reasonable expectation of pecuniary benefit or advantage from the continued life of another creates an insurable interest in such life."

In the case of *Unity Life Insurance Company v. Beasley*, 64 Ga. App. 277, 13 S. E. (2d), 32, the insurance contract

was identical in every respect with the one in the instant case, providing for divisions and position numbers of the policy holders. That action was one by an individual for recovery of paid insurance premiums plus interest, to which Beasley was held entitled. That Court said:

"This contract was an entire contract, written and continued in consideration of the payment of a *single* premium. Upon its face the endowment feature is the primary feature but whether it is primary or equally as important and vital as the life insurance feature, it is a vital part of the contract. The right of an insured to have the opportunity, for which he has paid, of receiving \$1,000 during his lifetime is quite as valuable, if not more so, as to have that amount paid to a beneficiary at his death."

In view of the foregoing, it is respectfully submitted that this contract is contrary to public policy and void.

POINT FOUR.

Upon the facts pleaded, property rights being involved, equity will intervene and the Court should appoint a receiver to take charge of this trust fund of well over a million dollars, now being dissipated, in order that it may be preserved and not wasted; and for the purpose of reorganization.

It is well settled that where property rights are involved, and trust funds are threatened, equity will intervene. Equity will displace by its receiver a trustee who is guilty of maladministration of his trust.

The point is so elementary that no extended discussion is necessary; nevertheless, the interests of a large number of members are at stake, and petitioner desires to strongly emphasize his position that he is not seeking to wreck Preferred, but is endeavoring to save it from ruin at the hands

of the respondents. With this guiding principle in mind, we call to the Court's attention the following pertinent citations of authority:

A case for the appointment of a receiver is made out if it be established that there has been misconduct, waste, improper disposition of the trust estate, or mismanagement or incompetency of the trustee. *Stairley v. Rabe* (1840), McM., Eq. (16 S. C. Eq.), 22; 2 Clark, Receivers (2d Ed.), 1416-1417; 4 Bogert, Trusts and Trustees, 2488; Note, 64 Am. Dec. 489.

The insurance assets of Preferred, being funds of fraternal association, constitute a trust fund for the benefit of the members at large, of which defendants are the present trustees. *McCall v. Grand Lodge* (1928), 217 Ala. 194, 115 So. 254; *Grand Lodge v. Shorter* (1929), 219 Ala. 293, 122 So. 36; *Most Worshipful Grand Lodge v. Callier* (1932), 224 Ala. 364, 140 So. 557; *National Circle v. Hines*, 88 Conn. 676, 93 Atl. 401; *Attorney General v. Supreme Council* (Mass.), 92 N. E. 134; *Dill v. Supreme Lodge* (D. C. Mo., 1915), 226 Fed. 807. But in any event, these funds were obtained by fraudulent representations in furtherance of a fraudulent scheme to enrich respondents, and respondents are, therefore, trustees *ex maleficio*. 3 Bogert, Trusts and Trustees, 1454.

In *Boesenberg v. Chicago Title & Trust Co.* (7 Cir., 1942), and rehearing denied June 12, 1942, 128 F. (2d) 245, the Court said:

"Plaintiff appeals from a dismissal of his complaint, the District Court having found that jurisdiction based upon diversity of citizenship did not exist for the reason that plaintiff's interest involved less than \$3,000. "Plaintiff sued as representative of a class great in number, all beneficiaries of a trust estate, averring that the trustees had been guilty of malfeasance, had wrongfully converted trust funds to their own use and

fraudulently paid excessive compensations to certain individuals. Plaintiff sought restraint of the trustees from further wrongful action, lodgment of the trust estate in a receiver to be appointed by the court, determination of the amount due the estate and its restoration to the fund. The sums said to have been wrongfully diverted were more than \$30,000 and the entire estate consisted of property worth some \$70,000. Plaintiff's proportionate interest therein is less than \$3,000.

"The District Court evidently believed this to be a suit to recover the several individual amounts due plaintiff and others of the same class of which the court had no jurisdiction because of lack of the essential element of jurisdiction depending upon diversity of citizenship, in that the sum due plaintiff is less than the requisite amount.

"We think this was error. True, several claims of many against one may not be aggregated to create a sum conferring jurisdiction. *Pusey & Jones Co. v. Haussen*, 261 U. S. 491, 43 S. Ct. 454, 67 L. Ed. 763; *Lion Bonding & Surety Co. v. Karatz*, 262 U. S. 77, 43 S. Ct. 480, 67 L. Ed. 871; *Illinois Bankers' Life Ass'n. v. Farris*, (7 Cir.) 21 F. 2d 1014; *Clark v. Paul Gray, Inc.*, 306 U. S. 583, 59 S. Ct. 744, 83 L. Ed. 1001; *Robbins v. Western Automobile Ins. Co.*, (7 Cir.) 4 F. 2d 249. But such is not the case before us. Rather it is within the rule announced by this court in *Johnson v. Ingersoll et al.*, 63 F. 2d 86, 87. There a stockholder brought suit to protect a corporate right and the resultant common interests of all stockholders therein, the corporation having refused to take action. In such case, it is not necessary for the shareholder to show that his private interest or damage, actual or threatened, amounts to the sum which is required to give the federal courts jurisdiction. That jurisdiction is tested by the value of the object sought to be gained by the suit. *Fidler v. Roberts*, (7 Cir.) 41 F. 2d 305, 306; *Troy Bank v. G. A. Whitehead & Co.*, 222 U. S. 39, 32 S. Ct. 9, 56 L. Ed. 81; *Swan Island Club, Inc., v. Ansell*, (4 Cir.) 51 F. 2d 337; *Haynes v. Fraternal Aid*

Union, (D. C.) 34 F. 2d 305, 307. See, also, *Hutchinson Box Board & Paper Co. v. Van Horn*, (8 Cir.) 299 Fed. 424, 428; *Larabee v. Dolley*, C. C., 175 Fed. 365, 378; *Greenwood v. Union Freight Co.*, 105 U. S. 13, 16, 26 L. Ed. 961; *Hawes v. Oakland*, 104 U. S. 450, 26 L. Ed. 827; *Harvey v. American Coal Co.* (7 Cir.) 50 F. 2d 832; *Clay v. Field*, 138 U. S. 464, 479, 11 S. Ct. 419, 34 L. Ed. 1044; *Whelless v. St. Louis*, 180 U. S. 379, 382, 21 S. Ct. 402, 45 L. Ed. 583; *Cyc. of Federal Procedure* 61, 62.

"This rule applies equally as strongly where the plaintiff is a beneficiary of a trust. *Handley v. Stutz*, 137 U. S. 366, 11 S. Ct. 117, 34 L. Ed. 796. Such was the situation in *Marion Mortgage Co. v. Edmunds*, (5 Cir. 1933) 64 F. 2d 248, 252. There plaintiff sought to recover for trust estates funds alleged to have been wrongfully diverted. The court held it immaterial whether the interest of plaintiff was worth more than \$3,000 saying: 'But these interests do not fix the amount in controversy, for this bill is not a suit to recover on the bonds and certificates. There is no prayer for such a judgment, but only for a recovery by each trust of what has been taken from it, to be returned to the several trustees who are parties. It is like a stockholders' bill to enforce a corporate right which the corporate officers refuse to assert. The amount in controversy is the corporate right and not the stockholder's interest in the corporation, which latter is necessary only to justify his suing in the corporation's behalf.'

"Inasmuch therefore as plaintiff sought to have the court take jurisdiction of a trust fund aggregating more than \$70,000 in value; to have restored to that fund sums aggregating some \$30,000 alleged to have been wrongfully diverted and to have the estate administered in court, it is apparent that the subject of controversy was not the recovery of plaintiff's interest in the trust fund but the protection, preservation and administration of a trust estate worth far more than \$3,000, under the well known powers of a court of equity. Such is a true class suit, which may be main-

tained by 'one or more' of the class, Rule 23, Rules of Civil Procedure, 28 U. S. C. A., following Section 723c; *United States v. 'Old Settlers,'* 148 U. S. 427, 13 S. Ct. 650, 37 L. Ed. 509; *Weeks v. Bareco Oil Co.,* (7 Cir.) 125 F. 2d 84. Consequently 'the issue of diversity of citizenship of the parties must be determined by the citizen status of the parties before the court.' *Irwin v. Missouri Valley Bridge & Iron Co.,* (7 Cir.) 19 F. 2d 300, 303.

"It is said, however, that, in view of the fact that within two days after the suit was begun, other beneficiaries, residents of Illinois, intervened and adopted the pleadings of plaintiff, the latter should be classed as original plaintiffs and the jurisdiction of the court defeated because of their citizenship. Whether the Court had jurisdiction is to be determined from plaintiff's complaint, which, we have seen, was sufficient. The fact that thereafter other beneficiaries were introduced into the controversy 'did not oust the jurisdiction of the court, already lawfully acquired, as between the original parties.' *Stewart v. Dunham,* 115 U. S. 61, 5 S. Ct. 1163, 1164, 29 L. Ed. 329; *Johnson v. Riverland Levee District,* (8 Cir.) 117 F. 2d 711, 134 A. L. R. 326; *Wichita Railroad & Light Co. v. Public Utilities Commission,* 260 U. S. 48, 43 S. Ct. 51, 67 L. Ed. 124; *Supreme Tribe of Ben-Hur v. Cauble,* 255 U. S. 356, at page 365, 41 S. Ct. 338, 65 L. Ed. 673. The jurisdiction of the court 'is determined as of the date when suit was begun' *Irwin v. Missouri Valley Bridge & Iron Co.,* (7 Cir.) 19 F. 2d 300; *Wichita Railroad & Light Co. v. Public Utilities Commission,* 260 U. S. 48, 43 S. Ct. 51, 67 L. Ed. 124.

"The judgment is reversed with directions to proceed in accord with this opinion."

(Petitioner has standing to ask for a receiver.) The District Court did not pass upon the points assigned in the third and fourth Specifications of Error, being apparently of the opinion that petitioner's claim for a money judgment, payment of which would be assured by reason of Pre-

ferred's solvency, barred petitioner from having any voice in the Society's management. The Court said (R. 166):

"It is not alleged that the Society is insolvent, nor that its business is being operated at a loss. The contrary affirmatively appears from the face of the pleadings and is conceded. If the first item of relief prayed by the plaintiff, namely, a money judgment, is granted by a Court of competent jurisdiction, and that judgment is collected, as it appears it can be, then would the plaintiff be longer interested in the defendant Society, and possibly entitled to have its officers displaced or a receiver appointed?"

Much the same points were made in *Ex parte Rowley*, 20 S. E. 2d 383, at 387, where the Court said:

"It is contended that the receivership must fall for lack of a proper action to which it is ancillary. This is based upon a misconception of the nature and form of the action which is mainly for the rescue by the court of funds constituting a trust, the insurance reserves against the policies issued by the defendant company and for a reorganization of it, in effect, a substitution of trustees. In the Powell action in the original jurisdiction of this Court, referred to hereinabove, it has been established and held that these insurance reserves are a trust fund for the benefit of the holders of current certificates of insurance. The preservation and enforcement of trusts has long been the exclusive function of equity and includes the appointment, removal and substitution of trustees (citing authorities). The appointment of a receiver was not incidental. Insolvency of the company was not necessary, * * *"

Petitioner's claim to a money judgment for fraud and deceit is an affirmation, not a rejection or rescission, of his contract. *Anderson v. Smitley* (1910), 141 App. Div. 421, 126 N. Y. S. 25; *Churchill v. St. George Development Co.* (1916), 174 App. Div. 1, 160 N. Y. S. 357. Hence recovery

and payment of such judgment would neither mature nor dissolve his contract with Preferred and his rights, as a member, to a voice in the Society's affairs remain unimpaired. Any damages he might recover would be for acts occurring before he became a member and which made his insurance less valuable than represented, and in no event would the recovery of damages be a waiver of his right to object to the continuance of the same misconduct which misled him into taking insurance with Preferred.

Petitioner's claim, as a member, of the right to ask for a receiver to conserve assets cannot, in Alabama, be disputed. *McCall v. Grand Lodge* (1928), 217 Ala. 194, 115 So. 254, *supra*; *Grand Lodge v. Shorter* (1929), 219 Ala. 293, 122 So. 36. To the same effect is *Woodmen of the World v. McCue* (1931), 88 Colo. 209, 204 Pac. 947. Petitioner, then, is a proper person to ask appointment of a receiver.

(Preferred's solvency is no bar to a receivership.) Whenever it is adequately pleaded and proved that the officers and directors of a solvent, going corporation are guilty of fraud, gross mismanagement or misconduct in office, or willful oppression of the stockholders or members, a case is made out warranting the appointment of a temporary receiver for such corporation, notwithstanding its solvency and equity has inherent jurisdiction to make such appointment. Cases supporting this proposition (including numerous Alabama authorities) are so completely collected and analyzed in the excellent Annotations in 41 A. L. R. 242, 61 A. L. R. 1212, and 91 A. L. R. 665, as to make further discussion pointless.

(Petitioner has made out a case for a receivership.) In the case at bar petitioner alleges that respondents have a self-perpetuating control of the Society and that through such control and especially through the instrumentality of

an overwriting contract held by the respondent Spencer H. Longshore, the Society is managed for the exclusive benefit of respondents. Typical of their management is the incident of the adoption of this overwriting contract, which was entered into secretly, without the knowledge or consent of the then membership, by a Board of Trustees which included Mr. Longshore's wife, his brother and his associate in organizing the Society. When these allegations are taken in connection with the averments relating to the formation of First National Life Assurance Society by the respondent, W. Guy Longshore, and its operation in direct and unfair competition with Preferred; and with those charging that its lodges are dummies and its supposed fraternal nature a sham¹⁰ no doubt remains that petitioner has adequately charged respondents with fraudulent misappropriations of assets, willful oppression of the members, gross misconduct in office and breach of trust, with every element requisite to the displacement of respondents and the appointment of a temporary receiver.

Organization of a supposedly non-profit corporation (Preferred) as a vehicle out of which it is intended to personally profit, and its actual use for such purpose, is such a heinous breach of faith with the persons who purchase insurance in such corporation and involves so much moral turpitude, that evidence of such intention and use will, without more, support a criminal conviction for fraud.

¹⁰ To the point that Preferred's charter and license are not conclusive that it is, in fact, a fraternal benefit society, see *White v. Central Dispensary and Emergency Hospital* (App. D. C., 1938), 99 F. 2d 355, 119 A. L. R. 1002 and note.

As to what is, and what is not, a fraternal benefit society, see (in addition to Sees. 8439 et seq. of the Alabama Code): *American Ins. Union v. Lowry* (5 Cir. 1932), 62 F. 2d 209; *Lange v. Royal Highlanders* (1905), 75 Neb. 188, 106 N. W. 224, 110 N. W. 1100, 10 L. R. A. (N. S.) 667; *Modern Order of Praetorians v. Bloom* (1918), 69 Okla. 219, 171 Pac. 917.

U. S. v. Littlejohn, (7 Cir., 1938) 96 F. 2d 368; *U. S. v. Minnee*, (7 Cir., 1939) 104 F. 2d 575. Hence it is error to refuse the appointment of a receiver *pendente lite* upon *prima facie* proof of charges remarkably similar to those here made. *Tolliver v. Board of Managers*, (1930) (Okla.) 286 Pac. 294. To much the same effect are *Grand Lodge v. Shorter*, (2d appeal, 1931) 222 Ala. 404, 132 So. 617, and *Woodmen of the World v. McCue*, (1931) 88 Colo. 209, 294 Pac. 947. And see *Strother v. McCord*, (1931) 222 Ala. 450, 132 So. 817; *Most Worshipful Grand Lodge v. Callier*, (1932) 224 Ala. 364, 140 So. 557, *supra*; *Carter v. Mitchell*, (1932) 224 Ala. 287, 142 So. 514; *Booker T. Washington Burial Ins. Co. v. Roberts*, (1934) 228 Ala. 206, 153 So. 409; *People v. Golden Rule*, (1886) 118 Ill. 419, 9 N. E. 342.

In *Grand Lodge K. P. et al. v. Shorter et al.*, 219 Ala. 293, 122 So. 36, 39, which was a bill in equity for the preservation and administration of an endowment fund, it being alleged, as here, that the officers of the defendant had mismanaged the fund, made personal gains therefrom, and were guilty of extravagance resulting in the depreciation of the fund, the Court held that a beneficiary of the trust fund may invoke the intervention of equity and the displacement of the trustee and transfer of the trust to the Chancery Court, basing its decision upon the proposition that where property rights are involved and trust funds are threatened, equity will intervene.

Likewise, in the case of *Toliver et al. v. Board of Managers*, (Okla. 1930) 286 Pac. 294, the Court held, citing *Grand Lodge K. P. et al. v. Shorter et al.*, *supra*, that where property rights are involved and trust funds are threatened equity will intervene.

Mr. Chief Justice Taft in *United Mine Workers of America v. Coronado Coal Company*, 259 U. S. 344, 66 L. Ed. 975, used the following language:

“ * * * Equitable procedure, adapting itself to modern needs has grown to recognize the need of representation by one person of many, too numerous to sue or to be sued (Story, Eq. Pl. 8th Ed. 94, 97. * * *).”

The amended complaint is sufficient to warrant the appointment of a Receiver. The facts set forth in the amended complaint and interrogatories clearly show that a receiver should be appointed to take charge of and conserve the assets of the Society. One of the objects of this suit is the protection and preservation of a trust fund which is being depleted and dissipated fraudulently, to the irreparable injury of policy holders who have a property right and interest in such fund.

As was said by the Supreme Court of Alabama in a similar case (*McCall v. Grand Lodge Knights of Pythias*) 217 Ala. 194, at 196:

“Very clearly, a policy-holder under these circumstances has the right to invoke equity's jurisdiction for the protection of trust funds, and may maintain a bill of this character: *Hoyze v. Harrison*, 165 Ala. 150, 51 So. 614; *Jasper Land Co. v. Waller, etc.*, 123 Ala. 652, 26 So. 659; 1 Pom. Eq. Jur. (4th Ed.), sec. 151; *Thos. A. Edison v. Edison Phonograph Co.*, 52 N. J. Eq. 620, 29 A. 195; *Chicago Mut. Life Ass'n v. Hunt*, 127 Ill. 257, 20 N. E. 55, 2 L. R. A. 549.

“In such a proceeding the policyholder would not seek a dissolution of the order, but that a court of equity through the appointment of a receiver, to take charge to prevent a further misappropriation and waste of the trust fund and protect the same, to the end that the defendant order and endowment department might continue to function, and be carried on as a ‘Going concern,’ and the contracts of insurance should be upon a sound financial basis, and ‘executed in their fullest integrity’.”

The action of the court below is contrary to the above decision, as a receiver should be appointed of the fund which is over a million dollars (R. 108).

POINT FIVE.

The action of the court below was contrary to the Act authorizing the New Rules of Civil Procedure and Rules of Civil Procedure 8 (e) (2), 23 (a), and 23 (b), and Rule 18.

The Act of June 19, 1934 (c. 651, paragraphs 1, 2 (48 Stat. 1064), U. S. C., Title 28, paragraphs 723b, 723c), which authorized this court to prescribe, by general rules, for the District courts in civil actions at law, states:

“Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant”.

The substantive rights of petitioner to bring this suit have been curtailed and destroyed by the action taken by the court below in dismissing this cause, which action is based upon its harsh, rigorous, drastic and erroneous interpretation of Rule 23 of the Rules of Civil Procedure. The court below held (R. 175-176):

“The announced purpose of the Federal Rules of Civil Procedure is to make pleadings simple and intelligible, and practice and procedure under them conducive to the speedy and sure attainment of just results, and the rules are so drawn that conformity with them will give effect to this purpose. In order to achieve the results intended by particular rules, while there should not be slavish, there should be substantial compliance with them, and a suit brought as an individual and not as a class action, without any regard to, or attempted compliance with, Rule 23, may not, in order to confer jurisdiction on the court, be construed as a class suit. The dismissal was, of course, without prejudice to the right of plaintiff to try again in the State Court or the Fed-

eral Court, as he may be advised, and whether if he tries again he might make a case under Rule 23, is not before us for decision. What the district judge decided and what we decide is only that, as brought, as an individual suit by plaintiff on his own behalf, the amount in controversy was not within the jurisdiction of the court. The judgment was right. It is affirmed."

In so holding, the court below apparently overlooked the following allegations of the petitioner:

Amended complaint paragraph number	Record Number	
8	136	"This action is brought to reorganize the insurance department of defendant, Preferred Life Assurance Society, and to displace its present officers and directors and trustees * * *"
18(i)	139	"* * * such representations constitute a fraud on plaintiff and all other members of Preferred Society."
18(j)	139	"* * * such representations constitute a fraud on plaintiff and all other members of Preferred Society."
23	143	"* * * the defendants * * * operate * * * same for their own personal benefit, and not for the benefit of the members, * * *"
23(a)	143	"* * * nor as he is informed, has any member of the Society ever received, one cent in dividends, despite the fraternal nature of the society * * *"
23(d)	143, 144	"Defendants thus deprived plaintiff and all other members of their right and opportunity to attend lodge meetings and vote on the election of delegates and officers of the Society and deprived them of any control over the actions of such officers, * * *"
23(f)	144	"* * * to the prejudice of Plaintiff and all other members in good health."
24(c)	144, 145	"* * * and have defrauded plaintiff and the other members of the Society by not informing them of the true facts * * *"
26	145	"* * * defendants, by reasons of the fraud and wrongs which they have perpetrated upon the society and upon plaintiff and the other members of the Society * * * and preserve the funds of the same for the benefit of plaintiff and the other members of said Society * * * said judgment being for the benefit of the Society and its members, for the fraudulent and wrongful conduct of said officers, directors and trustees."
Prayer (4)	146	Prayer: "For a money judgment against each of said officers, * * * as shall be found to be justly due and owing from each of said officers, directors and trustees to the Society."

It is respectfully submitted that the foregoing excerpts from the amended complaint filed herein clearly show that this is a class suit within the meaning of Rule 23 of the Civil Rules of Federal Procedure. Although the court below stated in its opinion that a case under Rule 23 was not made out here, yet it did not point out in what particularity in which the alleged non-compliance consisted; and it is respectfully submitted that the amended complaint fully meets the requirements of Rule 23.

Rule 8(e) permits two or more statements of a claim alternatively or hypothetically, in one count; and permits as many separate claims as exist, regardless of whether based on legal and equitable grounds, or on both.

Rule 18 permits a complaint to set forth as independent claims as many legal or equitable claims, or both, as may exist.

It is respectfully submitted that this amended complaint as filed is in accordance with the above-mentioned rules.

Conclusion.

It would be singular indeed, if in this case, where petitioner claims damages, actual and punitive, in the sum of \$200,000 (R. 145) for the benefit of the members of the Society and the Society against its officers, directors, and trustees for their fraudulent and wrongful conduct and asks for an accounting by them, (R. 146) and where petitioner has an interest in a trust fund created by the collection of over Four Million Dollars (\$4,000,000) (R. 147) in premiums, that the law would require the dismissal of this suit upon the ground that the controversy does not exceed Three Thousand Dollars (\$3,000).

We respectfully submit that the court has jurisdiction, and that the judgment of the United States Cir-

cuit Court of Appeals for the 5th Circuit should be reversed.

. Respectfully submitted,

WARREN E. MILLER,
Washington, D. C.;

R. K. WISE,
Columbia, South Carolina;

R. T. MILNER,
Wetumpka, Alabama;

FRED BALL, JR.,
Montgomery, Alabama;

R. B. BAENES,
Birmingham, Alabama;

W. H. BRANTLEY, JR.,
Birmingham, Alabama,

Attorneys for Petitioner.

APPENDIX.

Statutes.

Title 28 Sec. 41, U. S. C. A. confers jurisdiction of all suits of a civil nature upon the U. S. District Courts:

“* * * where the matter in controversy exceeds exclusive of interest and costs, the sum or value of \$3,000, and * * * is between citizens of different states.”

Title 28 U. S. C. A. Sec. 80 provides:

“* * * if in any suit commenced in a District Court, or removed from a State Court to a District Court of the U. S., it shall appear to the satisfaction of the said District Court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said District Court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said District Court shall proceed no further therein, but shall dismiss the suit or remand it to the Court from which it was removed, as justice may require, and shall make such order as to costs as shall be just.”

Alabama Statutes, Title 28, Paragraph 167 (8439) provides:

“*Fraternal benefit societies defined.*—Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provision for the payment of benefits in accordance with section 174 of this title, is hereby declared to be a fraternal benefit society.”

Alabama Statutes, Title 28, Paragraph 168 (8440) provides:

"Lodge system defined.—Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known, into which members are elected, initiated and admitted in accordance with its constitution, laws, rules, regulations and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such society to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system, and providing members may be admitted within twelve months from date of issuance of certificate according to the rules and regulations of the society. (Ib.; 1931, p. 71.)"

Alabama Statutes, Title 28, Paragraph 169 (8441) provides:

"Representative form of government defined.—Any society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws; provided, that the elective members shall constitute a majority in number and not less than the number of votes required to amend its constitution and laws; and provided further, that the meetings of the supreme or governing body, and the election of officers, representatives or delegates shall be held as often as once in four calendar years. No member under age sixteen shall have voice or vote in the management of the society. No member, officer, representative or delegate shall vote by proxy. (Ib.)"

Alabama Statutes, Title 28, Paragraph 172 (8444) provides:

"Extended or paid-up protection granted.—Any society which shall show by the annual valuation hereinafter

provided for that it is accumulating and maintaining the reserve necessary to enable it to do so, under a table of mortality not lower than the American experience table and four per cent interest, may grant to its members extended and paid-up protection or such withdrawal equities as its constitution and laws may provide; but such grant shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made. (1911, p. 700.)"

Alabama Statutes, Title 28, Paragraph 212 (8485) provides:

"Additional contributions; how made.—The by-laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full and to provide for the creation and maintenance of the funds required by its by-laws, additional, increased or extra rates of contribution shall be collected from the members to meet such deficiency; and such by-laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five percent per annum. (1911, p. 700.)"

Excerpt From Certificate of Incorporation—Objects and Purpose of Society.

Certificate of Incorporation recorded in the Office of the Probate Court, Montgomery, Alabama, August 28, 1928, shows the objects and purpose of the Society as follows (R-140):

"The object and purpose of the corporation are to form a fraternal benefit society, without capital stock, to be organized and carried on for the mutual benefit of its members and not for a profit and having a ritualistic form of work and a representative form of government, and to make provision for the payment of benefits in accordance with the laws governing fraternal

benefit societies. In addition to the payment of death benefits, the society will also pay benefits to the oldest member of each group in which death occurs, contingent upon mortality experience in such group, such benefits based on a reserve that shall be established and maintained upon a basis of not lower than the American Experience Table of Mortality with one year preliminary term and interest assumption at four per cent.

"Other objects of this Society are to unite in bonds of fraternalism and benevolence, all acceptable persons of good moral character and sound bodily health and who believe in the existence of a Supreme Being, to educate and (fol. 174) improve its members, morally, socially and intellectually and to furnish insurance protection and benefit upon the lives of such of its members as may be entitled thereto under the laws, rules and regulations of the society, for themselves and their beneficiaries as defined by law, as the member may direct to insure and protect and benefit, in the event of loss by death, accident, sickness or other disability, old age or other causes; also to accumulate, maintain, apply, disburse among its members a reserve, emergency, endowment or other fund as may be provided in its law, rules and regulations."

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 17

JAMES LANIER BELL,

vs.

Petitioner,

**PREFERRED LIFE ASSURANCE SOCIETY OF
MONTGOMERY, ALABAMA, ET AL.,**

Respondents.

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.**

PETITIONER'S REPLY BRIEF.

✓
WARREN E. MILLER,
Washington, D. C.;

✓
R. K. WISE,
Columbia, S. Car.;

✓
R. T. MILNER,
Wetumpka, Ala.;

✓
FRED BALL, JR.,
Montgomery, Ala.;

✓
R. B. BARNES,
Birmingham, Ala.;

✓
W. H. BRANTLEY, JR.,
Birmingham, Ala.,
Counsel for Petitioner.

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PETITIONER'S REPLY BRIEF.

Petitioner, in his petition for a Writ of Certiorari, presented six questions with reasons relied upon for the allowance of the Writ, all of which were directed to the correctness of the action of the Circuit Court of Appeals in holding that the Court was without jurisdiction of this suit. These same questions were all covered in petitioner's original brief filed herein, and petitioner relies upon all of the grounds assigned in his petition for Certiorari and has not waived any of the assigned grounds, his brief covering all of the points relied upon.

The statement in petitioner's brief as to the question presented, it is respectfully submitted, covers the sole question presented here, to-wit:

"Whether the judgment of the Circuit Court of Appeals was correct in holding that the Court was without jurisdiction of the subject matter of this suit."

Respondents' argument that petitioner has made no specifications of Assigned Errors, and consequently should not be heard, is apparently based upon the fact that the error assigned appears in petitioner's brief under the heading "Question Presented". While this could have been captioned "Assignment of Error", nevertheless it is not believed the Court should refrain from hearing this case in which it has already granted a Writ of Certiorari merely because the error complained of appears under the heading "Question Presented" instead of "Assignment of Error". The statement appearing under the heading "Question Presented" is adequate to inform the Court of the error urged, and the argument in petitioner's brief is broken down into five general divisions under which argument is presented for all of the grounds assigned in the petition for Certiorari, none of which have been waived. However, in order that there may be no question as to error assigned, the following assignment of error is made:

Assignment of Error.

Whether the judgment of the Circuit Court of Appeals was correct in holding that the Court was without jurisdiction of the subject matter of this suit.

Respondents here state (Respondents' Brief, P. 3):

"In effect, then, we may say that 'during a hearing or trial,' and hence not in writing (Rule 7 (b), Rules of Civil Procedure), a motion was made for summary judgment under Rule 56, Rules of Civil Procedure."

The record in this case is completely devoid of any motion having been made for summary judgment under Rule 56, Rules of Civil Procedure. At a pre-trial hearing on the amended complaint and answer, the respondents having raised in their "Second Defense" the question that the Court was without jurisdiction, this question was then considered by the Court after the presentation of briefs upon this point. After consideration of the pleadings and answers to the interrogatories (although all of petitioner's evidence on the whole case had not been presented), the District Court dismissed the cause, acting undoubtedly, under authority conferred by Rule 10 (h²), Rules of Civil Procedure, which provides:

"* * * that, whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action."

It will thus appear that the cause was dismissed, not upon a motion for summary judgment, but by the Court in exercising its prerogative in determining its jurisdiction.

Although the respondents urge that this is not a class action, nevertheless respondents in their answer filed herein (R. 148-164 and 38-52) did not raise any issue as to the capacity of petitioner to sue in a representative capacity, or his authority to so sue as required by Rule 9 (a) of the Rules of Civil Procedure, which provide:

"* * * When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge."

The United States Circuit Court of Appeals for the Fifth Circuit, notwithstanding the absence of an issue being

raised by the pleadings as to the capacity of petitioner to sue as a representative of the class he represents or his authority to sue in a representative capacity, nevertheless held (R. 175):

"Appellant's other point, that the suit should be considered as a class suit with the amount in controversy the value of, and the injuries to, the properties owned by the class, is equally without merit."

This, petitioner respectfully urges, was in error, no issue having been raised in the pleadings on this point.

Respondents contend that the entire record should be considered. The District Court in its opinion stated (R. 168):

"* * * it is satisfied that the complaint fails to state a claim upon which relief, within the jurisdiction of the Court, can be granted."

The Court of Appeals held (R. 176):

"* * * that, as brought, as an individual suit by plaintiff on his own behalf, the amount in controversy was not within the jurisdiction of the court."

As all of petitioner's evidence on the whole case had not been presented, it would seem that the allegations in the complaint should be controlling in determining whether a cause of action was stated. However, if petitioner's position is strengthened, if the Court feels that the entire record should be considered, as the record corroborates petitioner's contention.

Notwithstanding respondents' assertion (Respondents' Brief, P. 5) that the judgment of the court below was not a final judgment, it is respectfully submitted that the record shows the contrary to be true. The judgment of the court

below (R. 176) affirmed the judgment of the District Court (R. 168) which judgment reads:

“It Is Therefore:

Ordered, adjudged and decreed by the Court that the plaintiff's complaint be dismissed without prejudice, and that the costs of this action be taxed against the plaintiff, for which execution may issue.”

The record, therefore, clearly shows that the appeal taken here was from a final judgment.

Respondents in their brief do not attempt to contradict the assertion made by petitioner on pages 13 and 25 of petitioner's brief that the action of the court below was contrary to the decision of the Seventh Circuit Court of Appeals in *Boesenberg v. Chicago Title & Trust Co.*, 128 F. (2d) 245 (also see petitioner's brief, pages 37-40), and we may fairly assume that they do not challenge this conflict of decisions.

Respondents in their brief at page 8 admit that the Insurance Commissioners filed a report which “indicated some doubt upon the validity of the election of the trustees,” and “in order to remedy that situation the Supreme Lodge of the Society was called into extraordinary session.” Then an election was held as required by the constitution and by-laws of the Society.

Although the Society was incorporated August 28, 1929 (R. 140), the same trustees about whose election the Commissioners were in doubt had been operating the company and paying exorbitant salaries and commissions for some nine years when the Insurance Commissioners investigated it. As a result of a preliminary report of the Insurance Commissioner who examined the company in 1939, some of these contracts of employment were materially changed in that the amounts paid to the officers were materially reduced. The salary of Mrs. M. M. Longshore, Secretary and

Treasurer, was terminated; the salary of Joseph E. Justice, as President, was reduced from \$15,000 per year to \$5,000 per year—all effective December 1, 1939; and the term of the contract of S. H. Longshore was reduced from 25 years to 15 years, and that provision of his contract under which commissions accrued after his death were payable to his estate was eliminated. Commissions on second and subsequent years dues was reduced from 7½% to 5%, and his commission for first-year dues was set at 20%, with 5% commission on subsequent-year dues, except from the State of Louisiana where the commissions on such dues were reduced to 2½%.

If these salaries and commissions were excessive in 1939 when the Insurance Commissioners examined the company and while the company was on a good financial basis, surely it cannot be said that the salary and commissions received by these officials were not exorbitant and excessive during previous years when the company's financial condition was not so substantial.

That part of this suit which is directed against these officials of the Society seeks to recover on behalf of the Society and its members such excessive sums paid them. The action taken by the Society after the preliminary report of the Insurance Commissioners stresses and emphasizes the petitioner's right of action; and the fact that petitioner does have a right of action is accentuated by the fact that these contracts of employment were made with these same trustees, the election of whom was deemed doubtful by the Insurance Commissions, and the money was paid by their authorization. The reduction in salary of Joseph E. Justice, President, from \$15,000 to \$5,000 per year for any one year was more than three times the \$3,000 jurisdictional amount prescribed by statute to give the Court jurisdiction. Under the amended complaint, recovery is sought for excessive salaries paid over a number of years.

The action of the Society in making these changes for the benefit of its membership is in effect an admission that the previously existing contracts and salaries were not proper. Notwithstanding this, the same officers are now in control of the Society (R. 102) and there is nothing to prevent them from continuing the bad faith heretofore exhibited. Examinations by State Insurance Commissioners are only made periodically and at long intervals (apparently every three years) (R. 122), during which time ample opportunity is afforded these same officers to continue their illegal practice. This action seeks to replace these officers by others who are fit and suitable persons (R. 146). The relief prayed for in this suit is the only permanent remedy existing to divest these officers of their control of the company, so that they cannot continue their previous irregular practices.

Respondents argue that this matter should be left entirely to the Superintendent of Insurance of the State of Alabama, and urge that he has the administrative power and authority to see that the members are adequately represented in the election of officers, and to require the officers to perform their duties. These same officers who are now acting, however, were under the administrative supervision of the Superintendent of Insurance of Alabama for eleven years before that official caused certain changes to be made in the organization of the Society. He has no judicial function and cannot determine whether for the years prior to 1939 these officials are legally liable to the members of the Society for the money they withdrew from the Society under contracts made with the trustees, the validity of whose election prior to 1939 seemed doubtful even to the Insurance Commissioner. Only a court can determine that, which was just what the District Court was asked to do here.

Respondents take the position in their brief that the contracts written here, including petitioner's, are not contrary to the public policy of the State of Alabama. Petitioner maintains that these contracts are nevertheless contrary to public policy, both from a moral standpoint and their effect upon society. If the Legislature of the State of Alabama passed a law making it permissible to commit murder, under respondents' argument murder in that State would not be contrary to public policy, although admittedly it is fundamentally injurious to society as a whole. The mere fact that the legislature of a State passes a law, does not preclude this Court from determining whether such is contrary to established public policy.

This contract gives to another person in the insured's class an interest in the insured's life and makes it possible for such other person to collect when he dies. Also, it gives the insured such interest in still a third person's life. A "beneficiary by chance" might be tempted to murder the insured for the \$1,000 which he would receive upon the insured's death. This offers an incentive to do violence to another and if one without an insurable interest could collect upon the insured's death when only \$1,000 is involved, if that principle is upheld it would apply to a contract where any amount, \$500,000 or more, is involved. This clearly would tend to invite violence. It can be readily seen, therefore, that this principle is contrary to public policy, and it is respectfully submitted that this Court should not sanction, permit, or license this practice.

The respondents cite cases (Respondents' Brief, p. 60) holding that a person may take out a policy of insurance on his own life, payable to whom he desires.

In these cases, however, the insured himself designated the beneficiary, while in the instant case he does not do that. At the time he takes out the insurance no one can be sure who will be in the proper position in his class to benefit by

reason of his death when it occurs. He has no control whatsoever over designating the person who will benefit by his own death, this being left to chance. Further, the double premium which he pays is a premium on his contract and a premium on the life of another person. The original policy holder is in effect taking out insurance on the life of another in whom he has no insurable interest whatsoever and paying the premium on such policy for his own ultimate benefit. This scheme of double insurance promoted by the founders and present trustees and officers of this Society for their own benefit is entirely different from the cases cited by respondents (Respondents' Brief, pp. 60-61) because in those cases the insured was insuring his own life for a beneficiary designated by himself while here, in insuring his own life, he not only has no choice of beneficiary, but he is also paying premiums on the life of a person in whom he, *himself*, has no insurable interest whatsoever.

It is significant that respondents in their brief do not attempt to refute the assertion of petitioner that the contracts upon which premiums have been paid were wagering contracts, as no insurable interest exists between the policyholders, and therefore are contrary to public policy, and void. Respondents attempt to brush aside this question with the assertion that the question of a wagering contract is not here presented. However, it is respectfully submitted that this question is presented here because the court below held (R. 176) that the complaint did not spell out a cause of action within the jurisdiction of the court. In this connection, attention is invited to paragraph 24 (b) of the complaint (R. 144) which reads as follows:

"Plaintiff is now informed that this entire scheme of insurance is an illegal lottery and constitutes an illegal and unlawful scheme to defraud, and that is also a wagering contract in that it attempts to give to plaintiff

a beneficial interest in the lives of the other members of his division, in whom he has no insurable interest, and as to whom he does not belong to the class of beneficiaries of fraternal benefit insurance policies recognized and permitted by the Statute Law of the States of Alabama and South Carolina, and this is true for each and every member who participates in the scheme of insurance hereinabove mentioned and described."

Further, as admitted by respondents, the petition for certiorari asserted that the insurance practice being followed here amounted to an illegal lottery, and was a wagering contract in that it attempted to give a beneficial interest in the lives of members in whom no insurable interest existed. Therefore, it is respectfully submitted that this question is properly before the Court.

Furthermore, the Court should not close its eyes to the fact that this is a wagering contract and should notice this plain error of the court below.

Respondents end their brief with the statement that even if the contracts did amount to wagering contracts, this fact would not sustain any claim of class action in the present case. However, if this trust fund was created by a scheme contrary to public policy, and for the benefit of the respondents—and not the members who contributed towards it—certainly equity will intervene to insure its preservation, and even if the Court should hold, which petitioner does not contemplate, that this is not a class action, the court below had jurisdiction for the purpose of preserving the fund so created, which was one of the objects of this suit, in order to keep such fund from being further depleted and dissipated fraudulently to the irreparable injury of petitioner and the policyholders, all of whom have a property right and interest in such fund.

Respondents' Brief (p. 27) states " * * * apparently the petitioner himself was one of the litigants" in a South Carolina case cited, as "a policyholder by the name of Bell brought suit * * *". In order that the record may be straight in this respect, the Court is advised that this petitioner was not a party to such action, notwithstanding the similarity of names.

Respondents cite and quote at length from the case of *Andrews v. Equitable Life Assurance Society of the United States*, 124 F. (2d) 788, in support of its contention that the court below did not have jurisdiction of this suit. That was a suit for the distribution of surplus assets, determination of which was governed by the terms of the insurance contract. There, no element of fraud and deceit, unlawful use of funds by officers and trustees was charged, as here, where officers and trustees made contracts with themselves under which exorbitant sums of money had been paid them, although such trustees were not properly elected; no wagering contract was involved there, as here, and the facts were otherwise distinguishable from those in the instant case. Likewise, the other cases cited by Respondents are distinguishable from a factual basis.

The reports of the Insurance Commissioners of Alabama, South Carolina, and Georgia covering business written by Preferred Life Assurance Society for the year ending December 31, 1939 show premiums received by Society and claims paid as follows:

States in which business transacted	Premiums Received	Claims Paid
Alabama	\$198,467.80	\$24,400.00 (*)
South Carolina	66,488.80	5,000.00
Georgia	63,588.00	6,000.00

(*) Losses and Claims Incurred.

Thus it will be seen that the percentage of premiums used in the settlement of claims in the following States during year 1939 was:

Alabama	12.28 +%
South Carolina	7.52 —%
Georgia	9.43 +%

This low ratio of claims paid to premiums collected is remarkable when compared with other fraternal companies, as disclosed in the reports of the Commissioners of Insurance for the States of Alabama, Georgia, and South Carolina appearing in the Appendix, pages 12-15.

When the amount of claims paid and premiums received by Preferred Life Assurance Society of Montgomery, Alabama, as indicated on the tables appearing in the Appendix are compared with claims paid and premiums received by other fraternal insurance organizations, the disparity is marked. This, it is submitted, bears out the facts that this Society is really in business for its promoters and organizers who are the present trustees, instead of for the policyholders.

Respectfully submitted,

WARREN E. MILLER,
Washington, D. C.;

R. K. WISE,
Columbia, S. Car.;

R. T. MILNER,
Wetumpka, Ala.;

FRED BALL, JR.,
Montgomery, Ala.;

R. B. BARNES,
Birmingham, Ala.;

W. H. BRANTLEY, JR.,
Birmingham, Ala.,
Counsel for Petitioner.



FRATERNAL ORDERS TRANSACTING BUSINESS IN SOUTH CAROLINA IN 1939
(Cents Omitted)

NAME OF SOCIETY	BUSINESS IN SOUTH CAROLINA					BUSINESS EVERYWHERE		
	Business Written Revived, etc.	Business Terminated	Premiums Received	Claims Paid	Insurance in Force Dec. 31, 1939	Admitted Assets	Unpaid Claims and Current Liabilities (Except Reserve)	Total Insur- ance in Force Dec. 31, 1939
American Woodmen	\$2,600	\$29,250	\$3,358	\$2,250	\$108,950	\$3,139,864	\$63,706	\$16,301,983
American Workmen	83,615	95,977	23,612	18,078	395,293	609,105	13,150	2,883,180
Junior Order United American Mechanics	20,519	92,136	19,886	13,642	556,071	6,237,686	149,779	25,464,113
Knights of Columbus	27,150	13,300	4,650	4,000	329,600	49,210,837	730,049	256,586,813
Modern Woodmen of America	128,312	87,517	4,609	1,000	190,231	85,640,601	1,770,621	578,541,864
National Fraternal Society of the Deaf		3,563	882	180	34,864	2,121,344	8,174	5,058,589
Preferred Life Assurance Society	695,500	693,000	66,439	5,000	1,459,000	1,062,503	14,842	12,143,100
Royal Arcanum	49,000	7,000	2,179		105,500	29,823,028	651,342	81,930,569
Security Benefit Association	540		270		11,030	13,004,213	305,627	83,386,186
Travelers Protective Association			18,893	8,608		1,102,234	467,391	
United Commercial Travelers of America	335,000	205,000	5,838	2,484	1,980,000	1,751,568	550,542	366,195,000
Unity Life Insurance Company	1,545,978	954,712	167,943	25,670	5,143,566	168,026	3,000	7,265,645
Widows Fund of Oasis and Omar Temples	2,000	21,250	18,816	12,250	401,224	220,411	1,092	1,160,958
Woodmen Circle	306,543	231,620	54,129	41,225	2,430,006	80,478,563	374,002	106,831,483
Woodmen of the World	1,891,239	2,291,483	433,981	387,787	18,980,501	125,549,683	3,010,017	382,888,800
Working Benevolent State Grand Lodge	7,860	7,625	10,183	9,125	401,325	69,045	575	401,325
TOTALS	\$5,095,856	\$4,733,433	\$835,717	\$530,699	\$32,327,161	\$350,188,714	\$8,113,879	\$1,927,039,602

* Writes Accident Insurance Only.

BUSINESS OF FRATERNAL INSURANCE SOCIETIES FOR YEAR ENDING DECEMBER 31, 1939 IN GEORGIA

NAME OF COMPANY	Location	Total Ins. In Force End of Year	Risks Written During 1939	Premiums Received	Losses Paid	Losses Incurred
Acme Life Assur. Society	Atlanta	\$1,010,500	\$155,000	\$44,900	\$7,625	\$7,625
Amer. Woodmen (Supreme Can.p)	Denver	1,014,850	109,950	26,676	23,883	25,349
American Workmen	Washington, D. C.	303,352	121,230	19,045	6,311	6,311
Ben Hur Life Ass'n.	Indiana	293,381	48,571	6,220	3,721	4,053
Coastal Life Assur. Society	Baxley, Ga.	645,144	715,786	18,136	4,284	4,284
First Nat'l. Life Assur. Society	Atlanta	1,673,000	352,600	69,043	6,000	7,000
Independent Fraternal Union	Albany	1,288,300	409,070	17,052	11,611	11,611
International Life Assur. Society	Atlanta	523,500	258,500	21,091		
Knights of Columbus	Conn.	510,850	42,000	4,782	4,000	5,000
Laurens Co. Benevolent Ass'n.	Dublin	45,491	12,500	4,280	3,244	3,244
Maccabees (The)	Detroit	1,209,183	661,240	33,067	2,435	2,885
Modern Woodmen of America	Rock Island, Ill.	3,427,370	536,798	85,270	44,231	47,242
National Fraternal Society of the Deaf	Oak Park, Ill.	55,902	4,000	1,375	3,842	3,842
Practicians	Dallas, Tex.	761,740	300,500	20,314	15,368	15,368
Preferred Life Assur. Society	Montgomery	1,413,750	60,000	63,588	6,000	7,000
Railway Mail Ass'n.	Portsmouth, N. H.	2,032,000	60,000	5,634	3,254	7,877
Royal Arcanum	Boston, Mass.	842,804	165,000	27,780	52,132	47,632
Royal Neighbors of America	Rock Island, Ill.	43,107	2,000	790	500	500
Security Benefit Ass'n.	Topeka, Kan.	49,757	2,000	1,364		
Sons & Daughters of Peace	Sandersville	3,000	27	857	633	633
Stone Mountain Life Assur. Society	Atlanta	996,800	514,800	19,303	200	200
Travelers Protective Ass'n. of America	St. Louis, Mo.			44,411	14,475	17,385
United Amer. Mechanics (Jr. Order)	Philadelphia, Pa.	491,798	40,375	15,532	7,916	8,416
United Commercial Travelers of America	Columbus, Ohio	2,050,000	350,000	5,724	2,174	1,151
Unity Life Ins. Co.	Columbia, S. C.	1,753,626	668,320	108,304	6,000	8,000
Union Life Ins. Ass'n.	Tallahassee, Fla.	299,500	539,500			
Whitfield Life Ass'n.	Dalton	545,232	906,674	6,701	1,764	1,764
Woman's Benefit Ass'n.	Port Huron, Mich.	698,515	23,984	13,847	7,651	7,532
Woodmen Circle (Supreme Forest)	Omaha	3,102,617	380,750	81,222	35,469	38,146
Woodmen of The World Life Ins. Society	Omaha	24,324,955	4,568,661	591,145	440,073	442,764
Woodmen's Circle	New York	42,800	200	2,320	4,359	959
Totals		\$51,452,824	\$12,309,436	\$1,359,773	\$716,155	\$733,773

TABLE XII

ALABAMA BUSINESS OF FRATERNAL BENEFIT SOCIETIES FOR THE YEAR 1939

	In Force Dec. 31, 1938	Issued 1939	Terminated 1939	In Force Dec. 31, 1939	Losses and Claims Incurred	Premiums Received
Aid Association for Lutherans, Appleton, Wis.	146,571.00	25,000.00	8,315.00	163,256.00	534.65	4,074.15
American Workmen, Washington, D. C.	264,343.00	65,250.00	161,135.20	168,457.80	4,746.94	
A. F. & A. M. of Ala., End. Dept. B'ham., Ala.	2,280,100.00	365,100.00	222,900.00	2,422,300.00	58,326.86	75,852.90
Ben. Degree, Jr. O. U. A. M., Philadelphia	81,615.00	1,000.00	8,997.00	73,618.00	1,202.00	2,398.89
Ben Hur Life Ass'n., Crawfordsville, Ind.	139,088.00	4,254.00	23,950.00	119,392.00	7,952.40	3,832.65
Christian Benevolent Ass'n., Greenville, Ala.	(1)				2,391.22	2,940.62
Croatian Fraternal Union, Pittsburgh, Pa.	24,490.00	2,170.00	2,600.00	24,060.00	611.16	520.52
Farmers Gen. Union Society, Montgomery, Ala.	120,800.00	1,700.00	36,500.00	86,000.00	2,274.25	3,248.65
German Beneficial Union, Pittsburgh, Pa.	39,326.53	1,500.00	1,000.00	39,826.50		1,370.20
Good Templars Ben. Fra. Society, Troy, Ala.	29,635.00	2,380.00	680.00	31,335.00	680.00	1,155.69
Grand Chapter of Ala., O. of E. Star, Mobile, Ala.	(1)				24,800.00	30,643.43
G. L. Knights of Pythia of Ala., B'ham., Ala.	252,311.00	42,050.00	70,428.00	223,933.00	6,850.00	6,355.19
Home Mutual Aid Society, Heflin, Ala.	(1)				1,550.00	2,874.66
Independent Fraternal Union, Albany, Ga.	401,180.00	60,690.00	6,080.00	455,870.00	800.00	
Ind. Order of Immaculates, Decatur, Ala.	(1)				2,250.00	3,125.52
Ind. O. Universal Brotherhood, Coy, Ala.	(1)				2,925.50	3,555.60
Int. Order Twelve K. & D. of Taber, Mont'g'y., Ala.	211,860.00	27,520.00	43,800.00	195,580.00	7,920.00	6,526.32
Knights of Columbus, New Haven, Conn.	722,050.00	86,950.00	81,250.00	727,750.00	8,000.00	9,079.90
Knights of Peter Claver, Mobile, Ala.	37,600.00	800.00	800.00	37,600.00	800.00	757.40
Life Ins. Society of America, B'ham., Ala.	478,250.00	273,775.00	303,053.00	448,972.00	238.20	16,347.91
The Maccabees, Detroit, Mich.	1,934,839.91	1,237,592.56	1,091,369.30	2,078,063.17	16,124.69	55,162.80
Modern Woodmen of America, Rock Island, Ill.	3,217,468.00	195,484.00	279,250.00	3,133,702.00	41,325.00	75,501.22
Nat. Slovak Society of the U. S., Pittsburgh, Pa.	98,785.00	6,200.00	5,100.00	99,885.00	52.50	1,356.59
Old Gold Mutual Relief Society, B'ham., Ala.	108,900.00	53,800.00	1,750.00	160,950.00	1,750.00	2,823.38
Order of F. Commercial Travel's of A., Columbus, O.	1,320,000.00	165,000.00	125,000.00	1,360,000.00	0,080.86	4,189.60
Pioneer Life Assur. Society of Ala., Montgomery, Ala.	42,739.00	39,625.00	22,085.00	60,279.00	1,149.66	1,843.89
Police & Firemen's Ins. Ass'n., Indianapolis, Ind.	82,300.00	300.00	6,150.00	76,450.00	21,113.94	21,888.49
The Praetorians, Dallas, Tex.	9,531,489.00	3,648,135.00	4,003,753.00	9,175,871.00	62,017.00	225,600.55
Preferred Life Assur. Society, Montgomery, Ala.	3,333,331.00	1,353,000.00	3,522,084.00	6,274,250.00	21,400.00	193,467.80
Protected Home Circle, Sharon, Pa.	77,000.00	2,000.00	3,500.00	75,500.00		2,454.52
Royal Neighbors of America, Rock Island, Ill.	356,417.00	17,745.00	23,666.00	350,496.00	3,750.00	6,902.77
Security Benefit Ass'n., Topeka, Kansas	86,404.00	200.00	7,500.00	79,104.00	3,500.00	3,629.30
Sons & Daughters of Levi, Dothan, Ala.	170,050.00	207,200.00	128,930.00	248,320.00	2,600.00	6,762.99
Standard Life Ass'n., Lawrence, Kans.	822,228.00	146,861.00	192,926.00	776,163.00	8,238.88	16,766.67
Sup. Camp of the American Woodmen, Denver, Col.	741,700.00	74,920.00	77,400.00	739,220.00	12,473.90	19,212.61
Sup. Forest Woodmen Circle, Omaha, Neb.	3,439,865.00	325,557.00	427,497.00	3,337,925.00	45,426.38	77,809.49
Travelers Protective Ass'n., St. Louis, Mo.	(2)				3,669.72	12,297.00
United Order of the Golden Cross, Knoxville, Tenn.	616,345.00	11,015.00	50,290.00	577,070.00	19,272.00	19,023.41
Woodmen of the World Life Ins. Soc., Omaha, Neb.	24,087,862.00	4,664,529.66	5,322,930.66	23,429,461.00	402,327.59	535,852.15
Woman's Benefit Ass'n., Port Huron, Mich.	885,789.80	24,200.00	57,932.16	852,057.64	17,763.00	16,302.82
Workmen's Circle, New York	9,800.00	400.00		10,200.00	288.00	552.84
Totals	61,194,535.21	13,238,903.22	16,320,521.32	58,112,917.11	828,176.30	1,479,055.09

(1) Report Incomplete.

(2) Accident Ins. Only.

FILE COPY

OCT 4 1943

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1943.

No. 17.

JAMES LANIER BELL,
Petitioner,

v.

PREFERRED LIFE ASSURANCE SOCIETY OF MONTGOMERY,
ALABAMA, et al.,
Respondents.

On Writ of Certiorari to the United States Circuit Court of
Appeals for the Fifth Circuit.

BRIEF FOR RESPONDENTS.

RICHARD T. RIVES,
Montgomery, Alabama,
Attorney for Respondents.

A. F. WHITING,
HILL, HILL, WHITING & RIVES,
Montgomery, Alabama,
Of Counsel for Respondents.

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65 C. J. 661, Sec. 524	28
2 Moore Fed. Practice 2272, Note, 132 A. L. R. 197	54

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1943.

No. 17.

JAMES LANIER BELL,
Petitioner,

v.

PREFERRED LIFE ASSURANCE SOCIETY OF MONTGOMERY,
ALABAMA, et al.,
Respondents.

On Writ of Certiorari to the United States Circuit Court of
Appeals for the Fifth Circuit.

BRIEF FOR RESPONDENTS.

OPINIONS IN COURTS BELOW.

The District Court rendered an opinion which is not officially reported but is copied on pages 165 to 168, inclusive, of the printed record. The opinion of the Circuit Court of Appeals appears on pages 173 to 176, inclusive, of the printed record and is reported in 131 F. (2d) 516 et seq.

JURISDICTION OF THIS COURT.

Jurisdiction of the Supreme Court is based upon Section 240 (a) of the Judicial Code, 28 U. S. C., Sec. 347. This Court on April 19, 1943, granted the writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit (R. 176, 177).

STATEMENT OF THE CASE.

Introduction.

For convenience, we shall refer to the parties according to their positions in the District Court, to the petitioner as plaintiff and to the respondents as defendants.

As an appendix to this brief there are printed all of the statutes of the State of Alabama having any bearing upon this litigation. The Act approved August 1, 1927 (App. p. 63), and appearing in General Acts of Alabama 1927, page 219, was in force when the defendant Society was incorporated in 1928 (R. 140), and began business in 1929 (R. 10, 70), but was superseded in 1931 by the statute which is now Code 1940, Title 28, Sec. 3 (App. p. 64). The plaintiff became a member of the defendant Society in 1934 (R. 137). All of the other statutes are still in force and are all sections of the same Title 28 of the 1940 Code of Alabama.

Entire Record Should Be Considered.

The plaintiff asked for a temporary receiver to be appointed "to immediately take charge of the insurance department of the Society" (R. 7, 8, 145, 146). The defendant Society did not file a motion to dismiss [Rule 12 (b) Rules of Civil Procedure], but instead assigned as its first two defenses (R. 38):

"First Defense.

"The complaint fails to state a claim against this defendant upon which relief can be granted.

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"Second Defense.

"The Court lacks jurisdiction because the amount actually in controversy is less than \$3,000.00 exclusive of interest and costs."

The defendant Society also promptly filed its verified complete answer to the complaint (R. 38 to 69, 2, 148 to 164, 143). More than 200 separate interrogatories were filed by the plaintiff (R. 9 to 38) and the defendant answered those interrogatories under oath three days after they were propounded (R. 9 and 70 to 133).

The parties all joined in submitting the case to the District Court upon oral arguments and briefs. As stated by the District Court (R. 165):

"The defendant Society contends that the Court lacks jurisdiction because the amount actually in controversy is less than \$3,000.00 exclusive of interest and costs, and also that the complaint fails to state a claim upon which relief can be granted. Upon oral arguments and briefs, the case is submitted to the Court for decision upon the primary question of whether the Court has jurisdiction to grant the relief prayed by the plaintiff."

In effect, then, we may say that "during a hearing or trial," and hence not in writing [Rule 7(h), Rules of Civil Procedure], a motion was made for summary judgment under Rule 56, Rules of Civil Procedure.

The District Court considered the entire record, including facts not stated in the complaint, such as "that at present he (plaintiff) has paid a total in dues of only \$202.35" (R. 165, 149, 41).

The plaintiff designated that the interrogatories and answers thereto should be included in the record on appeal to the Circuit Court of Appeals (R. 1 and 2), and hence should properly be considered by that Court. In his brief in the Circuit Court of Appeals (page 4) the

plaintiff stated the question presented by that appeal in a manner to which the defendants agreed (Their brief page 2):

“The question presented by this appeal, then, is whether the complaint, **as supplemented by the entire record**, states any claim upon which relief can be granted and wherein the amount in controversy exceeds three thousand (\$3,000) dollars, exclusive of interest and costs.” (Emphasis ours.)

The plaintiff, in his brief in the Circuit Court of Appeals, based his argument upon the entire record and prefaced that argument with the following introduction:

“There is some disagreement among the Courts and commentators as to whether on a motion to dismiss under Rule 12 of the Federal Rules the Court is limited, as on demurrer, to a consideration of the pleading under attack, or whether the Court can look to the entire record, as on a motion for summary judgment under Rule 56. The plaintiff will not attempt to resolve this conflict, but, confident that he will prevail, regardless of which rule be adopted, will demonstrate **from the entire record** that at the very least he is entitled to present his proofs, and will urge upon this Court that so many of his allegations of wrongdoing have been admitted, and so many others not denied or answered evasively, that he has made out a prima facie case for the immediate appointment of a receiver.” (Emphasis ours.)

The Circuit Court of Appeals commented in effect that the decision of the District Court was based upon the entire record (R. 174):

“Depositions of certain of the officers were taken, and, the district judge of the opinion on the pleadings and the facts established by them and by the depositions, that since under plaintiff's certificate, he could never have been, or be, entitled to a sum greater

than \$1,000.00, his claims for damages were merely colorable, and that the suit was an individual suit and not a class suit under Rule 23, dismissed the cause for want of jurisdiction."

In this Court the plaintiff relied upon the answers to interrogatories in support of the petition for certiorari (Typewritten pages 4, 6, 7, 12) and also in its brief upon the merits (Petitioner's typewritten brief page 19).

It must, therefore, be conceded that the entire Record should be considered by this Court.

Lack of Finality of the Judgment as to Plaintiff's Substantial Rights.

The District Court found "that the complaint fails to state a claim upon which relief, within the jurisdiction of the Court, can be granted" and, therefore, dismissed the plaintiff's complaint **without prejudice** (R. 168).

The Circuit Court of Appeals emphasized that none of the plaintiff's rights were finally adjudged (R. 175, 176):

"The dismissal was, of course, without prejudice to the right of plaintiff to try again in the State Court or the Federal Court, as he may be advised, and whether if he tries again he might make a case under Rule 23, is not before us for decision. What the district judge decided and what we decide is only that, as brought, as an individual suit by plaintiff on his own behalf, the amount in controversy was not within the jurisdiction of the Court."

The Parties.

The petitioner here was the sole party plaintiff. He filed his original complaint on February 3, 1941 (R. 2, 9, 38), his amended complaint on March 4, 1941 (R. 133). On May 6, 1941 (R. 165), the District Court dismissed the

plaintiff's complaint without prejudice. The action had then been pending in the District Court for a little more than three months and still there was only one party plaintiff.

The plaintiff now claims that this is a class action. The complaint (R. 133) did not allege that the plaintiff represented anyone other than himself, nor that the complaint was filed on behalf of the other members of the defendant Society, nor on behalf of the Society itself. The complaint did not invite any other members of the Society to join, and, as stated, over a period of three months no one did join with the plaintiff.

Certainly \$200,000.00 of the relief prayed was for plaintiff's individual benefit solely (R. 146). True it was alleged that the appointment of a receiver as prayed would benefit both plaintiff and other members of the Society (R. 145), and that the money judgment against the defendant officers, directors and trustees would be for the benefit of the defendant Society and its members (R. 146, 146). However, plaintiff claimed that he himself was entitled to relief as well as to the \$200,000.00 damages and asked for judgment for all relief for himself (R. 145, 146).

The plaintiff was one out of 10,241 members (R. 138). He had paid in premiums or dues a total of \$202.35 (R. 151) as compared with total assets of the defendant Society of \$1,283,355.64 (R. 141, 156, 109). His insurance certificate when matured would be of the face value of \$1,000.00 as compared with total insurance in force in defendant Society of \$12,143,100.00 (R. 118). Several hundred thousand dollars of that insurance was upon different plans, ordinary life, twenty-pay life, endowment at 85, yearly renewable term insurance, and other miscellaneous plans (R. 118), in addition to the contingent endowment plan upon which plaintiff's certificate was issued.

We shall contend that the action was not a class action and could not have been a class action.

The defendants were a fraternal benefit Society organized under the laws of Alabama and its officers, directors and trustees (R. 133 to 135), most of whom were citizens of the same State. The plaintiff was a citizen of South Carolina. Jurisdiction of the District Court was sought on the ground of diversity of citizenship.

Other Record Facts.

Petitioner (plaintiff) confines his statement of the case to the charges, and allegations of the plaintiff's complaint (Petitioner's typewritten brief page 1 et seq.), and ignores the other record facts.

The defendant Society was organized August 28, 1928 (R. 140), and began business as a fraternal benefit society on February 16, 1929, with 504 members (R. 10, 70). Its membership has increased to over 10,000 (R. 138), and its assets and surplus have steadily accumulated (R. 162):

Year	Assets	Surplus
1929	\$ 2,410.25	\$ 1,268.04
1930	26,823.76	9,412.59
1931	60,160.51	16,999.84
1932	94,304.58	33,166.84
1933	171,267.16	44,411.66
1934	309,644.82	94,711.52
1935	442,985.68	147,388.92
1936	566,953.81	171,876.47
1937	705,925.79	192,417.54
1938	901,411.92	250,180.58
1939	1,062,503.28	267,896.29

A report of official examination as of December 31, 1939, of all the affairs of the defendant Society, including its fraternal workings and the relationship of its subordinate lodges, such examination having been conducted by the representatives of the States of Alabama, Mississippi and Tennessee pursuant to the requirements of the Na-

tional Association of Insurance Commissioners (R. 90), appears on pages 91 to 123 of the printed record. That report shows that a preliminary report had indicated some doubt upon the validity of the election of the trustees, but that in order to remedy that situation the Supreme Lodge of the Society was called into extraordinary session under the supervision of the Bureau of Insurance of the State of Alabama for which elections of representatives were "held in strict conformity with the constitution and by-laws" (R. 95). "This meeting was held on January 15th, 1940, at which trustees were elected in accordance with the constitution and by-laws. * * * An examination of the records of the Supreme Lodge and the local lodges indicate that the meetings and elections met fully the requirements of the Constitution and by-laws" (R. 96). The examiners found in existence and functioning twenty lodges located in five States (R. 100), and found that "the minutes and records of the subordinate lodges indicate that the by-laws were strictly complied with in the election of the representatives (to the Supreme Lodge meeting held January 15th, 1940). It is the opinion of your examiners that the Society is now meeting all reasonable requirements for a lodge society with ritualistic form of work and a representative form of government" (R. 101). The examiners further found that "an examination of numerous accepted and rejected applications were made which indicate that sound methods were used by its underwriter and medical examiners. This is also reflected in the mortality experience of the Society" (R. 119).—The examiners investigated the reinsurance arrangement with the First National Life Assurance Society of Atlanta, Georgia, and found that it had resulted in a profitable business to the defendant Society (R. 119). The examiners made the following report as to the changes in personnel and compensation of the officers, changes almost the same as those professed to be desired by the plaintiff (R. 121):

"On December 2, 1939, at a meeting of the Board of Trustees, the following changes were made in the personnel and compensation of the officers:

"(a) The resignation of Mrs. M. M. Longshore as Secretary and Treasurer, was accepted, effective December 15, 1939, and her salary terminated as of December 1, 1939.

"(b) The salary of Joseph E. Justice as President was changed from \$15,000.00 per year to \$5,000.00 per year, effective December 1, 1939.

"(c) The contract with S. H. Longshore, as General Manager, was modified effective December 1, 1939, in the following particulars:

"1. The term was reduced from 25 years after March 1, 1929, to 15 years from that date, making it expire on March 1, 1944.

"2. The stipulation therein providing that the commissions accruing under the contract shall be paid in the event of his death to his heirs or assigns was eliminated, so that in such event there shall not be payable to his heirs or assigns any amount that was not due and payable to him at death.

"3. The provision specifying a commission of 7½% on all second and subsequent years dues has been amended to provide for 5% on such dues.

"As modified, the contract terminates on **March 1, 1944**, provides for a commission of 20% of all first year dues, 5% commission on subsequent years dues except from the State of Louisiana, and 2½% of second and subsequent years dues from Louisiana."

By way of general comments the examiners reported (R. 122):

"The investments of the Society have been carefully selected. With the exception of its home office building, practically all assets are of a liquid nature, and none of its bonds or mortgages are delinquent as to principal or interest. The policy reserves are based

upon an interest rate of $3\frac{1}{2}$ per cent. At the yield now being realized the income from its bonds and mortgages, without taking into consideration other investment income, produces 4 per cent of the present policy reserves.

Insurance in force, including reinsurance, at December 31, 1939, amounted to \$12,143,100.00, which represents an increase since December 31, 1936, of \$727,947.00.

"Surplus shows an increase from \$171,876.47 on December 31, 1936, to \$261,134.73 at December 31, 1939, being a net increase of \$89,258.26."

The sworn answer ~~of~~ the defendant Society disclosed the following, among other facts:

"That defendant has only paid as death and contingent endowment and other claims to members approximately 14.55 per cent of its total income is accounted for by the fact that care is exercised in the acceptance of risks and by the fact that the society has been in existence only about eleven years; that the percentage of payment of income to members will substantially increase in the future, as the membership increases in age and as all members are paid in full when they reach 70" (R. 157).

The compensation paid to the President, Manager and Secretary up to December 15, 1939, while apparently large as salaries go in this section of the country, are in line with compensation received by officers of similar organizations throughout the country, and is not unreasonable or unfair, and in no sense a fraud against the society or its membership. The only officer receiving a seemingly large compensation is the General Manager, S. H. Longshore, and his compensation is on a commission basis and is predicated on the growth of the Society resulting from his efforts. Original trustees, receiving their appointment strictly in conformity with the laws of Alabama, and with full authority, when the Society had but \$5,000.00 in assets and about 500 members, entered into a contract with

said Longshore under which his reward was measured by the skill, energy and ability with which he managed the society and promoted its growth. * * * That the ratio of expenses—54.53 per cent to the total income of the society, is less than the average ratio of expenses to income of the majority of fraternal benefit societies operating on substantially similar lines throughout the United States, and has been duly checked and passed on by the Insurance Department of Alabama. The reduction of compensation at the January 15, 1940, meeting of the Grand Lodge and other economies being practiced, is expected to reduce this ratio in the future to an appreciable extent; that the State of Alabama has an Insurance Department specifically charged and directed with the duty and responsibility of administering all laws of the State relating to insurance and fraternal benefit societies, and to this department annual and other reports are made and the affairs of the society investigated and examined; said department has been and is fully advised of every feature of the society's operations and all suggestions and requirements of the Department of Insurance always have been promptly complied with; that this society has a surplus that insures protection to all of its members in the face of any eventuality, which is in itself an answer to any intimation that the society is not being operated fairly, honestly and efficiently" (R. 157, 158).

"The contract with the said S. H. Longshore was made on behalf of the society by trustees duly constituted as such by law, and with full power as such trustees. * * * that it was not contemplated or necessary that the membership of the society should consent to or approve such contract. This defendant avers, however, that said contract was known to trustees subsequently elected by delegates to the Grand Lodge meetings, said delegates being elected by the members of the society; that it is not contemplated and is impracticable for all members of the society to consent to or approve of the details of the management

of the affairs of the society, which are by law vested in the trustees" (R. 158, 159).

"The compensation of the officers of the Society are reasonable and have been approved by the Insurance Department of the State of Alabama; that no compensation is paid to trustees and directors as such, and that the officers are paid stated salaries with the exception of the General Manager whose compensation is on a commission basis established by contract with the Society when it was in its infancy, and whose compensation for years was small and incommensurate with the time devoted and efforts made for the advancement of the Society; it avers that under the laws of its organization it is not required that the members shall be paid dividends; that under the careful and economical conduct of the affairs of this defendant it has accumulated a substantial surplus, same being as shown by the examiners from the Insurance Department of Alabama and Mississippi as of December 31, 1939, in the sum of \$261,134.73; that following said report this defendant voluntarily gave without charge to its members paid-up and extended insurance as a part of their certificates; that this was approved by the Insurance Department of the State of Alabama" (R. 159).

PETITIONER HAS MADE NO SPECIFICATIONS OF ASSIGNED ERRORS.

Rule 27 of the Supreme Court requires the petitioner's brief to contain "a specification of such of the assigned errors as are intended to be urged (See Rule 39, par. 2)." The parenthetical reference removes any doubt that the requirement applies to review on writ of certiorari.

Rule 27 further provides:

"6. When there is no assignment of errors, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded, save as the court, at its option, may notice a plain error not assigned or specified."

Rule 38, Par. 2, provides in part:

"Only the questions specifically brought forward by the petition for writ of error will be considered."

See *National Licorice Co. v. National Labor Rel. Board*, 309 U. S. 350, 357, Note 2, 84 L. ed. 799, 807, Note 2, and authority cited.

Questions Presented by Petition for Certiorari.

The questions presented by the petition for certiorari (typewritten petition, page 5) are very general, but are limited by the brief in support of each of the questions. Let us review each of the six questions presented:

"1. Whether the decision of the Court below was in conflict with that of the 7th Circuit Court of Appeals in the case of *Boesenberg v. Chicago Title & Trust Co.*, 128 F. (2d) 245, and the decisions of the 8th Circuit Court of Appeals in the cases of *Young v. Maine*, 72 F. (2d) 640, and *Greene v. Keithley*, 86 F. (2d) 238."

Under the first case cited the petitioner, plaintiff, contended that the action was a class action, and that the amount involved was the total assets of the defendant Society (Petition, pages 5 and 6). Under the latter two cases cited the petitioner, plaintiff, argued that exemplary damages may be added to actual damages to make up the federal jurisdictional amount, and that the Court had jurisdiction of the plaintiff's claim for damages to himself. In that part of the brief in support of this first question there is a reference in a part of one sentence to a claim that "The alleged insurance practice being followed is a scheme amounting to illegal lottery and constituting an illegal and unlawful scheme to defraud, is also a wagering contract in that it attempts to give a beneficial interest to petitioner in the lives of the other members of his division in whom he has no insurable interest,

and as to whom he does not belong in the class of beneficiaries of fraternal beneficial insurance policies permitted by the statutes of the States of Alabama and South Carolina" (typewritten brief in support of petition, page 8). That reference in the brief is the only way in which that question is presented by the petition for certiorari. It is not pertinent to any of the three decisions cited in Question 1 (Petition, page 5). It is clear, therefore, we submit, that the question of wagering contract vel non is not presented.

"Whether included in the petition, or separately presented, the supporting brief is not a part of the petition, at least for the purpose of stating the question on which review is sought."

General Talking Pictures Corp. v. Western Elec. Co., 304 U. S. 175, 178, 82 L. ed. 1273, 1275.

"2. Whether the Court below has decided a federal question in a way probably in conflict with applicable decisions of this Court."

The contention of the petitioner (plaintiff) as shown by its brief on this question (typewritten brief, pages 10, 11 and 12) is that the District Court should have added the exemplary damages claimed by the plaintiff to the actual damages to make up the federal jurisdictional amount of \$3,000.00.

"3. Whether the Court below has decided an important question of local law in a way probably in conflict with applicable local decisions of the Supreme Court of the State of Alabama."

The contention of the petitioner (plaintiff) as shown by its brief (typewritten brief, pages 12 and 13) is twofold.

(a) That the complaint is sufficient to warrant the appointment of a Receiver for the protection and preservation of a trust fund, and,

(b) That punitive damages are included in the relief prayed and should be added to make the jurisdictional amount required.

"4. Whether the Court below has decided an important question of Federal law which has not been, but should be, settled by this Court."

As shown on page 14 of its typewritten brief the contention of the petitioner is, that the cases cited in question numbered one should be approved by this Court.

"5. Whether in a class suit, when more than two statements are made in a complaint, and one or more of them if made independently would be sufficient to give the Court jurisdiction, the complaint is not made insufficient by the insufficiency of one statement."

As shown on pages 14 to 17 of its typewritten brief in support of the petition for certiorari, the petitioner claims that even though his claim for \$200,000.00 individual damages against the defendant Society might not be sufficient, he had a right to bring a class action on behalf of the defendant Society and its other members.

"6. Whether the Court below violated the provisions of certain Rules of Civil Procedure."

The petitioner's brief (page 17) referred to Rules 8 (c) (2), 23 (a) and 23 (b).

The foregoing are all of the questions presented by the petition for certiorari.

No Specification of Assigned Errors in Brief on Merits as Required by Supreme Court Rule 27.

Under Supreme Court Rule 27 the petitioner (plaintiff) should have selected such of the questions presented by his petition for certiorari as he intended to urge. The only remote resemblance to an assignment of error or

specification of assigned error is contained in the second paragraph of petitioner's brief on merits:

“Questions Presented.

“Whether the judgment of the Circuit Court of Appeals was correct in holding that the Court was without jurisdiction of the subject matter of this suit.”

That question was not covered by any of the questions presented by the petition for certiorari (Petition, page 5). Moreover the Circuit Court of Appeals did not hold that the Court was without jurisdiction of the **subject matter** of this suit. It held only that “as brought as an individual suit by plaintiff in his own behalf, the amount in controversy was not within the jurisdiction of the Court” (R. 166). The dismissal was without prejudice and the Court reserved the right when the case might properly be before it to rule on whether it had jurisdiction of the subject matter of the suit.

It is respectfully submitted that under Supreme Court Rules 27 and 38 there is no sufficient assignment of errors, and the petitioner should not be heard.

SUMMARY OF THE ARGUMENT.

I.

The complaint does not state a claim on which relief can be granted to the plaintiff individually for fraud and deceit wherein the amount in controversy exceeds \$3,000.00 exclusive of interest and costs.

(a) The complaint fails to state a claim on behalf of the plaintiff for relief for fraud or deceit.

(b) The plaintiff's claim for damages in the sum of \$200,000.00 (or in any sum in excess of the jurisdictional amount) is colorable.

(c) The plaintiff cannot join claims of other members of the Society for separate frauds alleged to have been committed on them.

(d) Damages for fraud, deceit or other tort cannot be collected from the trust fund of the defendant Society provided for the payment of benefits.

II.

The complaint does not state a claim on which relief can be granted as a class action.

(a) This action does not profess to be and is not a class action.

(b) Plaintiff does not "fairly insure the adequate representation of all" [Rule 23 (a), Rules of Civil Procedure] of the members of the defendant Society.

(1) The plaintiff's interest is too small.

(2) The plaintiff's interest is not the same as the interests of those whom he would represent.

(c) Rights of members of the Society as such are governed by the laws of Alabama, the State of incorporation.

(d) Under the laws of Alabama the State Superintendent of Insurance is entrusted with the duty to protect the funds of the Society.

(e) As to the funds of the Society other than the trust fund, the members of the Society have no individual rights of action.

(f) The trust funds of the Society have never been dissipated nor impaired and are in no danger of being invaded.

(g) The plaintiff and the other members who he claims to represent have no such joint rights in the trust funds of the Society that they may be aggregated to make the jurisdictional amount.

(h) The plaintiff did not comply with Rule 23 of the Rules of Civil Procedure.

(i) The defendant Society is aligned in interest with the plaintiff, and the requisite diversity of citizenship does not exist as between the defendant Society and its officers, directors and trustees.

(j) Taken in connection with the record facts, the complaint fails to make a case as a class action against any of the defendants.

ARGUMENT.

I.

The Complaint Does Not State a Claim on Which Relief Can Be Granted to the Plaintiff Individually for Fraud and Deceit Wherein the Amount in Controversy Exceeds \$3,000.00 Exclusive of Interest and Costs.

• (a) The complaint fails to state a claim on behalf of the plaintiff for relief for fraud or deceit.

The plaintiff asks judgment for damages in the sum of \$200,000.00 (R. 146) for fraud and deceit alleged to have been perpetrated upon him as set forth in Paragraph 10 of his complaint (R. 137). He claims that an agent of the defendant society on or about November 10, 1934, by false representations made to him, induced him to procure a certificate of contingent endowment insurance issued by the defendant society. The certificate was for \$1,000.00; the total amount paid by plaintiff from the time of his application, November 10, 1934, until the time of the filing of the original complaint February 3, 1941 (R. 2), or for a period of six years, was \$202.35 (R. 41, 149), or less than \$34.00 per year. The alleged false representations as set forth in Subdivisions a and b of Paragraph 10 of the complaint are (R. 137):

“a. Said agent represented to plaintiff that: (1) plaintiff would have the number Five (5) position in his division; (2) plaintiff would ‘collect in two years easy’; (3) ‘we will fill this group before we start another one’; (4) there would be twenty-five (25) members in plaintiff’s division.

“b. Said agent further, in effect, represented to plaintiff that plaintiff’s division would be completely filled before any memberships were sold in any other divisions of plaintiff’s age class.”

The plaintiff says that he believed these representations to be true, and relied and acted on them. If this statement of his is true, then he entered the District Court with **unclean hands** and was properly cast therefrom, for he brands himself as well as the agent with the brand of frauds—a fraud sought to be perpetrated on the defendants as well as a fraud sought to be perpetrated upon other certificate holders of the plaintiff's age class. He says that one of the representations that he relied on and acted on was "Plaintiff would 'collect in two years easy.'" In other words, that plaintiff would collect from the defendant society \$1,000.00 before he had paid to the defendant society \$68.00. In the very nature of things he knew that for this to come to pass a fraud in all probability would be perpetrated on the defendant society. Yet he says that he relied and acted on this representation.

The record discloses that some of the representations alleged to have been made were true. The plaintiff concedes that the representation (1) Plaintiff would have No. 5 position in his division was true (Paragraph 10 of complaint, R. 137).

Representation No. 3, "We will fill this group before we start another one," was also true.

The defendant society did not after the date of plaintiff's application, November 10, 1934, start a single other group, class or division. It was prohibited from doing so by an Act of the Legislature of Alabama, approved July 30, 1931, referred to in defendant's answer (R. 150, Code 1940, Title 28, Sec. 3, App. 64). "Such . . . fraternal benefit society . . . shall not hereafter (after July 30, 1931) establish its policyholders or members into divisions or classes other than the divisions or classes, actually containing subsisting policies or certificates." Indeed, the plaintiff himself avers in Paragraph 15 of his complaint (R. 138) the following:

"a. Defendants opened a total of 1,456 divisions, and still have 1,454 divisions open.

"b. All the said divisions were opened prior to July 30, 1931, and long before defendants solicited plaintiff to apply for insurance." (Emphasis ours.)

And such averments were admitted by the defendants (R. 153).

The next representation alleged to have been made to and relied on by plaintiff is: "4. That there would be 25 members in plaintiff's division" (R. 137). The plaintiff knew that he was No. 5, and hence that there were only four other members in his division. It proved impossible to obtain 25 members in each division, though the defendants made every reasonable effort to secure as many members as possible up to 25 members in each of its divisions, and it is to the defendants' financial interest to secure as many members as possible in each division (R. 152, 153). New members were added to existing divisions so as nearly as possible to keep the same number of members in each division of a particular age class.

The form of contingent endowment certificate now issued by the defendant Society, and which has been the form in use for the past several years, is shown by Exhibit B to the answer (R. 59, 149). The last sentence of the second paragraph of the certificate (Exhibit B to answer, R. 59) reads: "Each applicant's certificate will be placed in the division of his class containing the fewest number of members."

The plaintiff complains, however, that the defendant Society's agent further in effect "represented to plaintiff that plaintiff's division would be completely filled before any memberships were sold in any other divisions of plaintiff's age class" (R. 137). Necessarily the plaintiff knew that this would constitute a fraud upon the members of the defendant Society in other divisions of the plaintiff's age class. Yet he says he relied on this being done and acted thereon.

The foregoing constitutes all of the false representation, fraud or deceit alleged to have been perpetrated on the plaintiff individually. We respectfully submit that the complaint does not state a claim for relief to the plaintiff for fraud or deceit.

(b) Plaintiff's claim for damages in the sum of \$200,000.00 (or in any sum in excess of the jurisdictional amount) is colorable.

The plaintiff claims that he should have his certificate of insurance remain in force, and in addition thereto should have damages in the sum of \$200,000.00, all because he alleges that by fraud and deceit he was induced to part with his dues in the sum of \$202.35 paid on a certificate which admittedly he knew could never be worth more than \$1,000.00.

It is submitted that the alleged fraud and deceit, which we have just commented on under (a), when considered with the admitted facts, does not make a case for the imposition of punitive damages.

"Punitive damages may not be recovered in such an action (deceit) unless the fraud is gross, malicious, oppressive and committed with an intention to so injure and defraud."

Southern Building & Loan Assn. v. Bryant, 225 Ala. 527.

If punitive damages are recoverable, then there has never been any contention nor any holding either of the District Court or of the Circuit Court of Appeals that exemplary damages may not be added to actual damages to make up the federal jurisdictional amount. The decision of the Circuit Court of Appeals is not contrary to the decisions of the Eighth Circuit Court of Appeals in the cases of Green v. Keithley, 86 F. (2d) 238, and Young v. Maine, 72 F. (2d) 640.

Both the District Court (R. 165, 166) and the Circuit Court of Appeals (R. 175) held simply that plaintiff's claim of \$200,000.00 damages to himself on his \$1,000.00 certificate was entirely colorable for the purpose of conferring jurisdiction, and both Courts cited *St. Paul Ind. Co. v. Cab Co.*, 303 U. S. 289. There is no controversy about the proposition that where exemplary damages are recoverable they may be added to the actual damages to bring the case within the jurisdiction of the District Court.

Barry v. Edmunds, 116 U. S. 550, 29 L. ed. 729;
Scott v. Donald, 165 U. S. 58, 89, 90, 41 L. ed. 632,
639.

Those cases are cited by this Court in *North American Transportation Co. v. Morrison*, 178 U. S. 262, 267, 44 L. ed. 1061, 1063, with the distinguishing principle here relied on added:

"But where the plaintiff asserts, as his cause of action, a claim which he cannot be legally permitted to sustain by evidence, a mere *ad damnum* clause will not confer jurisdiction on the Circuit Court, but the Court on motion or demurrer, or of its own motion, may dismiss the suit. And such, we think, was the present case."

The Fifth Circuit Court of Appeals has repeatedly recognized the principle that a claim of exemplary or punitive damages must be included in determining whether the jurisdictional amount is involved.

Ragsdale v. Rudich (5th C. C. A. 1928), 293 Fed. 182;

Scalise v. National Utility Service (5th C. C. A. 1941), 120 F. (2d) 938.

Nothing to the contrary was indicated in the opinion in the instant case, but the decision of both the District Court

and of the Circuit Court of Appeals was grounded upon the principle expressed in *St. Paul Mercury Ind. Co. v. Red Cab Co.*, 303 U. S. 283, 289, 82 L. ed. 845, 849:

"But if, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to receive that amount, and that his claim was therefore colorable for the purpose of conferring jurisdiction, the suit will be dismissed."

The petitioner insists, however, that his mere claim of \$200,000.00 damages is sufficient to confer jurisdiction. Is it not legally certain that the plaintiff cannot recover that amount, nor any amount sufficient to bring the case within the jurisdiction of the District Court? The plaintiff has actually paid in premiums or dues a total of \$202.35 (R. 151) upon a certificate of insurance which, when matured, would be of the face value of \$1,000.00. Any right of the jury or Court to award punitive damages is not an arbitrary or unlimited discretion.

25 C. J. S., page 738, Sec. 126.

As said by the Alabama Supreme Court in *Alabama Water Service Co. v. Harris*, 221 Ala. 516, 519:

"Punitive damages, if wantonness appear, must rest in large measure within the discretion of the jury. But this is not an unbridled discretion.

"The nature of the case should be considered, the character and extent of injury likely to result from disregard of duty, and all the attendant circumstances. Judicial fairness, avoidance of any form of passion or bias tending to becloud the sense of justice, should be carefully maintained."

"The award (of punitive damages) should not be disproportionate to the actual damages sustained."

17 Corpus Juris, page 995, Sec. 293;

25 C. J. S., page 740, Sec. 126.

As said by the Alabama Supreme Court in the early case of *Mobile & Montgomery Railroad Co. v. Ashcraft*, 48 Ala. 15, 33:

“The punitive damages ought also to bear proportion to the actual damages sustained.”

The principle is probably more accurately expressed in the later decision of the Alabama Supreme Court heretofore quoted, *Alabama Water Service Company v. Harris*, 221 Ala. 516, 519, to the effect that in awarding punitive damages “The nature of the case should be considered, the character and extent of injury likely to result from disregard of duty, and all the attendant circumstances.”

The character and extent of the injury possible to result from any disregard of duty and the actual damages sustained could never in any case exceed the face amount of the certificate when matured, \$1,000.00. The Circuit Court of Appeals was correct in concluding, we submit, that (R. 175):

“The complaint contains not a single allegation of fact on which a judgment for damages claimed in excess of the value of his certificate could possibly be awarded. It is legally inconceivable that a person holding a certificate representing a claim for money which could not at the most bring more than \$1,000.00, could be entitled to a judgment for damages on account of being induced to purchase the certificate by representations that it was worth \$1,000.00 when, in fact it was worth less.”

(c) **Plaintiff cannot join claims of other members of the Society for separate frauds alleged to have been committed on them.**

The plaintiff alleges a separate fraud committed upon him (R. 137) and separate and “respective degrees of guilt of the personal defendants as to the various frauds” (R.

135). He further alleges in paragraph 24 (c) of his complaint (R. 144, 145) that defendants "have defrauded plaintiff and the other members of the Society by not informing them of the true facts concerning the operation of the Society and by nevertheless continuing to accept the members' moneys without making such disclosure."

It is submitted that such separate claims of fraud cannot be joined in a class action. It was well said by the New York Court of Appeals in a recent case (1937) that:

"The law offers a choice of remedies to a person who has been induced to act in reliance upon false representations. Each buyer of a certificate of an undivided share in a mortgage acquires by his purchase an individual right; and where such purchase is induced by fraud, the wrong done is a wrong to the buyer individually; the choice of remedy for such wrong rests with each buyer, and the cause of action is separate and individual. No buyer has an interest in the cause of action of another buyer, and, therefore, no buyer is a necessary or, indeed, even a proper party to an action at law brought by another buyer to recover the damages which he has suffered or the consideration he was induced by fraudulent misrepresentations to pay. * * *

"The purpose of a representative action is to permit an adjudication of a question in which others who are not parties to the action, though they might be made so, are interested. * * * In cases properly falling within this principle, wherein members of a class sue or are sued on behalf of other members of a class who have a common or general interest or are too numerous to be made actual parties, the judgment or decree is conclusive for and against those members of the class who are thus represented, in the absence of fraud or collusion." 1 Freeman on Judgments, § 436. Cf. rule 8 of the Rules of Civil Practice. That result could not be extended to entirely separate causes of action, such as the plaintiffs have pleaded in this ac-

tion. There would be no basis then for determination of what parties are 'similarly situated.' "

Brennen v. Title Guaranty & Trust Co., 276 N. Y. 230, 114 A. L. R. 1010;

See also the annotation attached in 114 A. L. R. 1015 on the subject "Similar frauds practiced on various persons as basis of representative suit."

(d) **Any damages for fraud, deceit or other tort cannot be collected from the trust fund of the defendant Society provided for the payment of benefits.**

In the recent case (1942) of *Powell v. Gary*, 200 S. C. 154, 20 S. E. (2d) 391, the counsel from South Carolina appearing in the present case for the petitioner, were of counsel and apparently the petitioner himself was one of the litigants, for the Court comments that "About 1939 suits began to be filed charging the Company with fraud and deceit, and, in January, 1940, a policyholder by the name of Bell brought suit in the Court of Common Pleas for Richland County against the Company and its officers and directors, whereby the appointment of a receiver and liquidation were sought." The Court stated the issue as follows:

"The issue is: Do the funds of the Company necessary to constitute proper and legal reserves against the existing current policies constitute a fund exclusively so applicable and which cannot be reached by other creditors of the Company? In other words, is it a trust fund for that alone?"

After considering the pertinent South Carolina statutes, which are virtually the same in this regard as the Alabama statutes, the Court concluded:

"It is, therefore, held that the policy reserves constitute a special fund applicable to that purpose only."

In other parts of his complaint [see paragraph 26 (r) R. 145] the plaintiff claims that the funds of the Insurance Department of the defendant Society constitute "a trust fund for the benefit of plaintiff and other members of the Society." The plaintiff's claim for \$200,000.00 damages for alleged deceit is based on representations alleged to have been made to the plaintiff by the soliciting agent of the defendant Society (R. 137), and is, therefore, a claim for damages against the defendant Society itself. The Courts generally will not allow a trust fund to be impaired by the tort of the trustee.

65 Corpus Juris 661, Sec. 524.

The funds of a fraternal benefit society are clearly divided into a trust fund and an expense fund by express provisions of numerous sections of the Alabama statutes regulating fraternal benefit societies. (Code 1940, Title 28, Sections 176, 177, 180, 183 and 220, set out in full in the appendix to this brief.)

Section 176 provides that "The net beneficiary assessment collected upon such certificate shall be based upon the standard industrial table of mortality and interest at the rate of three and one-half per cent per annum, or upon a higher standard."

Section 177 provides that "The net beneficiary funds so collected shall be kept as separate and distinct funds, and shall not be liable nor used for the payment of debts and obligations of the society other than the benefits herein authorized."

Section 183 provides that "No part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses."

The decisions of the Supreme Court of Alabama very definitely define the trust fund:

"The endowment fund, arising from payment of a monthly assessment or premium of \$1 from each policyholder, is segregated into an expense fund, and a mortuary fund, the latter being **the permanent trust fund** held and invested for payment of death claims."

Grand Lodge K. P. of Alabama v. Shorter, 222 Ala. 404, 405, 122 So. 38;

See, also, Strother v. McCord, 222 Ala. 450.

"A diversion of mortuary funds was one cause assigned for the appointment of a receiver by the Jefferson Court. Grand Lodge v. Shorter, 219 Ala. 293, 122 So. 36; Id., 222 Ala. 404, 132 So. 617.

"This is upon the theory that such mortuary fund is a trust which can, pursuant to the constitution of the order be used for death claims only. It is the fund required by sections 8449, 8450, Code (now Code 1940, Title 28, Secs. 176, 177). The latter section of the Code also prohibits its use for the payment of debts and obligations other than death claims."

Carter et al. v. Mitchell et al., 225 Ala. 287, 291;

See, also, Most Worshipful Grand Lodge (colored) v. Callier, 224 Ala. 364, 370;

McCall v. Grand Lodge, 217 Ala. 194;

Grand Lodge K of P. v. Shorter, 219 Ala. 293, 294.

It is clear, therefore, that any damages to which the plaintiff might be entitled for fraud, deceit or other tort cannot be collected from the trust fund of the defendant Society provided for the payment of benefits. What fund of the defendant Society then is subject to the payment of any such tort damages? The report on the examination of the defendant Society as of December 31, 1939, showed that "the policy reserves are based upon an interest rate of three and one-half per cent" (R. 122). That is in compliance with Code 1940, Title 28, Section 176. That report showed the policy reserves as of December

31, 1939, to be \$779,765.00, and the unassigned funds to be \$261,134.73 (R. 109). The policy reserves constitute the trust fund, and the unassigned funds or surplus are the funds liable for expenses or any other legal claims. The separation of those funds is shown by years on Record Page 162, which shows the present surplus to be \$267,896.29. That constitutes the total fund of the Society which is not a trust fund for the payment of benefits, and out of this fund of \$267,896.29 the plaintiff asks for damages to himself in the amount of \$200,000.00.

It is respectfully submitted that the complaint does not state any valid claim on behalf of the plaintiff for relief for fraud or deceit, and, further, that even if any such claim is stated, the damages laid in the sum of \$200,000.00 or any sum in excess of the jurisdictional amount are entirely colorable for the purpose of conferring jurisdiction.

II.

The Complaint Does Not State a Claim on Which Relief Can Be Granted as a Class Action.

(1) This action does not profess to be, and is not, a class action. Rule 23, Rules of Civil Procedure, provides that under certain conditions one or more of a class may "on behalf of all" file a suit. The present action does not purport to be filed on behalf of any person other than the one individual plaintiff (R. 133 to 146).

"Where a suit is brought by or against a few individuals as representing a numerous class, that fact must be alleged of record, so as to present to the court the question whether sufficient parties are before it to properly represent the rights of all."

McArthur v. Scott, 133 U. S. 340, 28 L. ed. 1015, 1032.

In *Gonzalez v. Roman Catholic Archbishop*, 208 U. S. 1, 19, it was held by this Court that an alleged right of the plaintiff to property as representative of heirs as a class cannot be given consideration in a suit not brought as a class suit:

The reason for the rule is cogently stated by the Supreme Court of Tennessee:

"The rule is founded in inherent justice, and could stand by its own strength, even if it were unsupported by the eminent authority which has been adduced in its behalf. It is without doubt highly important that the Court, by proper pleadings, should be apprised of the fact that the party named as defendant does not appear in the record in his own right merely, but, by construction of law, representing in his own person the rights and interests of others. Being so informed, the Court has imposed upon it a duty, especially in the supervision of agreements and compositions during the trial, as well as other points looking to a fair presentation of the case, similar to the duties imposed where the rights of infants are involved. And for a stronger reason must this be true, when the fact is considered that it is always in the power of one about to file such a bill to select such representatives as he may desire. And if bills may be so filed, ostensibly against one or a few persons only, without notice being brought to the Court that they are sued as representatives of a class, and afterwards the complainant be allowed to claim that the whole class is found, the most disastrous consequences might well happen to the estates of innocent persons, which the courts would be equally powerless to prevent or redress."

Brown v. Brown, 86 Tenn. 277, 316, 6 S. W. 869, 7 S. W. 640.

See, also:

McClelland v. Rose (5th C. C. A., 1918), 247 Fed. 721, Annotated Cases 1918 C, 341, 343;

Johnson v. Riverland Levee District (8 C. C. A., 1941), 117 F. (2d) 711, 715;

21 Corpus Juris, page 287, Sec. 287;

47 Corpus Juris, page 178, Sec. 332;

14 Corpus Juris, page 940, Sec. 1460;

18 C. J. S., page 1292, Sec. 570 (a).

The fact that some of the relief prayed may possibly benefit not only the plaintiff individually, but the defendant Society and the other members of the Society, does not make this action a class action. That same condition existed in the very similar case of Grand Lodge K. of P. v. Shorter, 219 Ala. 293, 296, but the Supreme Court held that the action was an individual suit and not a class action, saying:

"Complainants are beneficiaries of this trust fund, and have a direct interest in seeing that its integrity is maintained, that its proper status is restored, and that it is properly managed. They do not file this suit in a representative capacity. It is an individual suit. It may be assimilated to a suit by a taxpayer to prevent a city from wasting public funds. Though it may result in benefit to others, the purpose is to protect the rights of complainants."

Grand Lodge K. of P. v. Shorter, 219 Ala. 293, 296.

The more than ten thousand other members of the defendant Society (R. 138) either were satisfied or did not understand that they were invited to join with the plaintiff, for during the three months pendency of this litigation in the District Court not a single other member joined.

The Circuit Court of Appeals decided nothing more than that this action was not brought as a class action, but as an individual suit by plaintiff on his own behalf (R. 176). There are, however, many other fatal objections to the consideration of this action as a class action.

(b) The plaintiff does not "fairly insure the adequate representation of all" of the members of the defendant Society.

Rule 23 of the Rules of Civil Procedure authorizes a class action to be brought only by those who "fairly insure the adequate representation of all" of the class. It would be difficult to employ stronger language. The **adequate representation of all** of the class must be **fairly insured**. The plaintiff does not meet that requirement.

(1) The plaintiff's interest is too small.

The Seventh Circuit Court of Appeals in *Pelelas v. Caterpillar Tractor Co.*, 113 F. (2d) 629, 632, certiorari denied 311 U. S. 700, 85 L. ed. 454, in commenting upon Rule 23, said:

"The rule carried into the present code the essence of former Equity Rule 38, 28 U. S. C. A., following section 723. It is even more stringent; and under it the court is at liberty to consider the number appearing on record as contrasted with the number in the class; 2 Moore's Federal Practice, Section 23.03, p. 2234; and whether the relationship between the parties to the record is unique or one identical and common with that of all others of a class, 2 Moore Federal Practice, Section 23.03, p. 2225. There must be a sufficient number of persons to insure a fair representation of the class."

See also the discussion of the District Court in this case, *Pelelas v. Caterpillar Tractor Co.*, 30 Fed. Supp. 173, 176, where the following is quoted with approval from *Sparks v. Robinson*, 115 Ky. 453, 74 S. W. 176:

"But the one essaying to act for all must be a fair representative of the class, and this he must show to be entitled to claim the right. It was not enough that he should belong to the class whose alleged grievances or property rights he presumes to involve in litigation."

tion, but he must show such an interest that the court may see that his motive and financial concern are probably in harmony with at least the average of the body. It will be observed that the Code (section 25) makes this right permissive, which we understand to be in respect of the above rule, and to involve the exercise of the sound judicial discretion of the chancellor. If this were not so, then one with but slight interest in fact, but actuated by some other motive not common to, nor in keeping with, the welfare of those he would represent, could involve their property in a litigation to be conducted by such skill and labor as he would feel warranted to engage in his own small affair. This should not be allowed. Or, e. g., appellant, with an interest of 3 cents only, volunteers to litigate for property holders whose possessions are over \$9,000,000, and whose direct pecuniary concern is nearly \$15,000. He proposes to choose for them their lawyer, set the gauge of their litigation, control in a large measure the conduct of this to-be enormous suit, and have charged to them the whole of the costs (for appellant's proportion of the costs could not be measured in any denomination of money known to the law):"

The Seventh Circuit Court of Appeals again considered at length the question of the disparity between the number actually suing and the number in the class in the recent case of *Weeks v. Bareco Oil Co.* (1941), 125 F. (2d) 84, 91, 92.

In *Pacific Fire Insurance Co. v. Reiner* (District Court Eastern District Louisiana 1942), 45 Fed Supp. 706, it was held that one out of a class of five thousand did not adequately represent the class.

In the present case the plaintiff is one out of 10,241 members of the defendant Society (R. 138). A large number of those members carry their insurance on an entirely different plan (R. 118). The plaintiff has contributed a total of only \$202.35 (R. 151 and 43) to assets of the

defendant Society totaling \$1,283,355.64 (R. 141, 156, 122). The plaintiff's policy of insurance when matured would be of the face value of \$1,000.00 as compared with insurance in force of \$12,143,000.00 (R. 118). Upon any basis of comparison, the number of members of the defendant Society, the possible interest in its assets, the amount of insurance as compared with the total amount of insurance in force, the plaintiff represents less than two one-hundredths of one per cent of all of the members of the defendant Society. It is fantastic, we submit, to assert that such representation fairly insures the adequate representation of all. Surely the interest of plaintiff's lawyers must far exceed the interest of plaintiff himself. The well established rules of public policy forbidding champerty and maintenance prevent the Court from taking jurisdiction of this action for the benefit of persons who are not parties to the record.

(2) Plaintiff's interest is not the same as the interest of those whom he would represent.

As said by the Supreme Court of the United States in the recent case of *Hansberry v. Lee*, 311 U. S. 32, 132 A. L. R. 741:

"A selection of representatives for purposes of litigation, whose substantial interests are not necessarily or even probably the same as those whom they are deemed to represent, does not afford that protection to absent parties which due process requires."

In Alabama one of the prerequisites of the operation of the doctrine of virtual representation is that "the relationship between the parties present and those represented should be such as to afford reasonable assurance of proper defense."

Culley v. Elford, 187 Ala. 465.

"The Bill must show that those made parties have such interest as to induce them to bring forward the entire merits of the question."

Ussery v. Darrow, 238 Ala. 67, 74.

"In a class action the plaintiffs should not introduce any question of priority or any matter which may give rise to a contest or opposition between themselves and any of those whom they wish to represent."

South East Nat. Bank v. Board of Education (1938),
298 Ill. App. 92, 18 N. E. (2d) 584 (followed in
[1938] 298 Ill. App. 621, 18 N. E. [2d] 599, 601,
602, 603).

For farther authorities we refer to the note attached to the opinion in *Hansberry v. Lee*, supra, in 132 A. L. R. 749, on "Identity or community of interest essential to class or representative suit."

The plaintiff insists that he is in good faith in claiming \$200,000.00 as damages to himself from the defendant Society. We have already commented that that claim of \$200,000.00 cannot be from the trust fund for the payment of benefits, but must be from the surplus, which consists of \$267,896.29 (R. 162). The plaintiff alleges that other members of the Society have been similarly defrauded [paragraph 24 (c) of complaint, R. 144]. If a single other member should claim even one-half the amount claimed by plaintiff, and the two should be successful, then the defendant Society would be left with no surplus or operating funds. In that event would the 10,239 other members of the defendant Society who receive nothing feel that they had been adequately represented?

But, says the plaintiff, if I may not represent the other members of the Society, I may represent the Society itself in enforcing a claim against its officers, directors and trustees. Is it conceivable that the plaintiff may in one

part of his action sue the Society as defendant and claim a recovery against the Society for the enormous sum of \$200,000.00, and then in another part of the same action sue for the benefit of the Society against the officers, directors and trustees of the Society! The plaintiff cannot in one breath condemn and in the other breath support the defendant Society. His interests are conflicting and his positions are antagonistic.

The plaintiff complains that the defendant sold insurance in other divisions at plaintiff's entry age before filling plaintiff's division (see paragraph 16 of the complaint, R. 138). Unless the defendant had treated the members in all existing divisions upon the same basis, a fraud would have been perpetrated upon members in other divisions. The defendant avoided any such unfair treatment by providing in its certificate of insurance that "each applicant's certificate will be placed in the division of his class containing the fewest number of members" (Exhibit B to answer, R. 59).

The plaintiff's claims are clearly hostile to members in other divisions of his same age class. Not only is this true, but it is difficult to imagine any two members or certificate holders the value of whose certificates or memberships depend upon the same thing. They all vary with the facts, such as the age of the certificate or policy, the age of the certificate holders or policyholders, the position of the certificate holder or policyholder in his division, the condition of the health of the member, the condition of the health of others in the division of the certificate of the member, and the plan of insurance upon which the members' certificate was issued. Several hundred thousand dollars of insurance was issued on plans entirely different from the plan of the plaintiff's insurance, as Ordinary Life Insurance, 20 Pay Life Insurance, Endowment at age 85, Yearly Renewable Term Insurance, and miscellaneous plans (R. 118). Members holding insurance upon

such totally different plans cannot possibly be adequately represented by the plaintiff.

In a case almost on all fours with the present case, *Eberhard v. N. W. Mutual Life Ins. Co.*, 241 Fed. 353, 356, the Sixth Circuit Court of Appeals said:

“Each represents a different class, since the policy of each matures at a time different from the others.”

In 39 American Jurisprudence, page 922, Sec. 47, the rule is well stated:

“Persons having interests adverse, antagonistic, or hostile to those of the persons purported to be represented cannot maintain a representative or class suit in behalf of the latter, or be sued as their representatives.”

(c) The rights of the members of the Society as such are governed by the laws of the State of Alabama, the State of incorporation.

In *Sovereign Camp W. of W. v. Bolin*, 305 U. S. 66, 75, this Court said:

“The beneficiary certificate was not a mere contract to be construed and enforced according to the laws of the state where it was delivered. Entry into membership of an incorporated beneficiary society is more than a contract; it is entering into a complex and abiding relation and the rights of membership are governed by the law of the state of incorporation. Another state, wherein the certificate of membership was issued, cannot attach to membership rights against the society which are refused by the law of the domicil.”

In *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 551, 69 L. ed. 783, 785, this Court said:

“The indivisible unity between the members of a corporation of this kind in respect of the fund from which their rights are to be enforced, and the conse-

quence that their rights must be determined by a single law, is elaborated in *Supreme Council, R. A. v. Green*, 237 U. S. 531, 542, 59 L. ed. 1089, 1100 L. R. A. 1916A, 771, 35 Sup. Ct. Rep. 724. The act of becoming a member is something more than a contract—it is entering into a complex and abiding relation—and as marriage looks to domicile, membership looks to and must be governed by the law of the state granting the incorporation. We need not consider what other states may refuse to do, but we deem it established that they cannot attach to membership rights against the company that are refused by the law of the domicile. It does not matter that the member joined in another state."

(d) Under the laws of the State of Alabama the State Superintendent of Insurance is entrusted with the duty and responsibility to protect the funds of the Society.

The Superintendent of Insurance of Alabama has ample authority under the statutes of the State to correct each and all of the alleged abuses of which the plaintiff complains.

See Alabama Code 1940, Title 28, Sections 46, 58, 222, 223, 224, 225, 261, 266, 268 and 269 copied with other sections in the appendix of this brief.

Indeed, the record shows conclusively that the Superintendent of Insurance has been diligent and has already effected the reorganization which the plaintiff professes to desire. He is in much better position to perform that administrative function than is the Court, for the Court might appoint a receiver under whose supervision an election of officers and trustees would be conducted strictly in accordance with the laws of Alabama and the laws of the Society, and yet the new officers might continue the abuses complained of or might perpetrate even worse abuses. Let it be said sadly that too often such has been the experience of our democratic forms of government. The Superintend-

ent of Insurance, however, has the administrative power and authority not only to see that the members are adequately represented in election of officers, but further to require those officers to perform their duties. The Superintendent of Insurance of Alabama has exercised that authority, as is shown by the report on examination of the defendant Society as of December 31, 1939 (see especially R. 121, 122).

In McGarry v. Lentz et al. (6th C. C. A. 1926), 13 F. (2d) 51, certiorari denied 273 U. S. 716, 71 L. Ed. 855, it was well said;

“With so large a number of policy holders as is usual, each of whom is a member of the society, and therefore with an equally large number of separate and possibly divergent views upon questions of management, the usefulness of any such society, the power of its officers and directors, and the success of its purpose might be seriously impaired, if every member were permitted, under the claim of being a cestui que trust, to litigate questions of policy or of rights affecting the membership as a whole. The need is apparent of centralizing control, and of providing the exclusive manner in which members may question acts or policies affecting the entire membership. As to all questions of internal management, including the necessity or propriety of dissolution and receivership proceedings, and not excluding current questions arising in the normal conduct of its business, as to which latter injunction or quo warranto would be the indicated remedies, we think it was intended that the decision of the board intrusted with such management would be final and conclusive, unless questioned through action by the Attorney General of the state, or through other means provided by the by-laws of the corporation, and not inconsistent with the law of the state or its charter.

“In view of the quasi public nature of fraternal benefit societies, the undoubted power of control of the

state over its own corporations, the assumption of general supervisory powers and control by the state, and the necessity of and reason for a centralization of management, protected from attack except in the general interest of all, as represented by the Attorney General, we conclude that this statutory provision is purely regulatory. Our reasons for this conclusion find support in numerous decisions. See *Swan v. Mutual Reserve Fund Life Ass'n*, 155 N. Y. 9, 49 N. E. 258; *Uhlman v. N. Y. Life Ins. Co.*, 109 N. Y. 421, 17 N. E. 363, 4 Am. St. Rep. 482; *Delaney v. Anc. Order of United Workmen*, 244 Mass. 556, 138 N. E. 918; *Baird v. Modern Samaritan*, 162 Minn. 274, 202 N. W. 498; *Albach v. Fraternal Aid Union*, 100 Kan. 511, 164 P. 1065; *Lowery v. State Life Ins. Co.*, 153 Ind. 100, 54 N. E. 442."

See, also, *Paul v. Kraemer*, 24 Fed. Supp. 353, 355; *Soptich v. St. Joseph National Croatian Beneficiary Assn.* (1926 D. C. Kan.), 34 F. (2d) 566.

In the recent South Carolina case, *ex parte Rowley* (1942), 200 S. C. 174, 20 S. E. (2d) 383, at 387 (and in which we observe petitioner's South Carolina attorneys were counsel for the complaining certificate holders), the South Carolina Supreme Court quotes with approval certain authorities in which it states "Industrious counsel for the appellant have submitted," and those authorities are so apt here that we repeat the quotations:

"In *Swan v. Mutual Reserve Fund Life Assn.*, 155 N. Y. 9, 49 N. E. 258, the Court said:

" * * * The effect of the legislation was not to cut off the rights of a party, but merely to prescribe the form of the remedy which he must avail himself of in the pursuit of his object to compel the corporation to perform acts or to account as to matters in respect of which it may be alleged to have been negligent or wasteful or mistaken. The plaintiff is not maintaining a purely and essentially private action, with the

result of which only himself and the corporation defendant are concerned; but he is maintaining one which concerns a large body of the public, and the condition and management of the affairs of a particular class of corporations, which have been the especial objects of the care and watchfulness of the State. It is no particular hardship to him, and it impairs none of the force of the obligations of the company to him, that he should be compelled to follow the particular procedure declared by Statute . . .

“If the views which I think we should adopt upon the question before us are not correct, then these corporations, chartered by the State as they are for the common benefit of those who wish to co-operate in the business of life insurance, are at the mercy of any member who, with unworthy or dishonest motives, chooses to attack them, and, by threatened interference with their methods or management, may compel them to make a settlement with him in order to secure, as was said in the Uhlman case, freedom from troublesome, expensive, unnecessary and wholly disingenuous investigations into affairs and accounts running through many years.”

“In *Baird et al. v. Modern Samaritans et al.*, 162 Minn. 272, 202 N. W. 498, is the following:

“ . . . Good reasons readily suggest themselves for the enactment of Section 3482. In associations of this sort every one insured is a member. If any dissatisfied or disgruntled member on his own motion may drag the association and its governing body into court as to the conduct of its business or methods of procedure, its usefulness will be seriously impaired and its very existence endangered. The mere fact that an action is brought affects the standing of such an association without regard to whether or not any basis exists for so doing.”

“In *Delaney et al. v. Grand Lodge*, 244 Mass. 556, 138 N. E. 918, the Supreme Judicial Court of Massachusetts said:

“This branch of the present proceeding is without the scope of this statute. It doubtless was designed to prevent hostile attacks upon an institution in which large numbers of persons are interested, except through the instrumentality of a public officer, and to render impossible the harm which might come to a solvent and worthy beneficiary corporation insuring great numbers of people through ill-considered proceedings. The business of insurance is invested with general public interest and is subject to State regulation within rational bounds. Any act of the Legislature directed to this end within reasonable limits will be upheld.”

Ex Parte Rowley (1942)—S. C.—20 S. E. (2d) 383.

Counsel for petitioner will doubtless call to our attention that the opinion in that case further comments that “the Courts of some other States, notably Alabama and Colorado, have held in effect * * * that in cases of insolvency or fraudulent operation, the Court will entertain an application for receivership on the part of an individual certificate holder.” We shall come to the Alabama cases mentioned immediately, and shall show that the principle of those cases applies only when the trust fund has been invaded.

(c) As to funds of the Society other than the trust fund, members of the Society have no individual rights of action.

We have already shown that the trust fund is the policy reserve required by Alabama Code 1940, Title 28, Sections 176 and 177. (See ante this brief, pages 27-30).

Section 180 of the same Title hereafter copied in the appendix to this brief provides, in part:

“Any society may create, maintain, invest, disburse, and apply an emergency, surplus or other similar fund

in accordance with its laws. Unless otherwise provided in the contract, such fund shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in section 172 of this title."

Section 172 referred to, also copied in the appendix, provides the conditions under which the Society may grant to members extended and paid-up protection. There is no provision for paying dividends to the members as complained of in Paragraph 23 (a) of the complaint (R. 143), but the defendant Society has without additional charge given its members paid-up and extended insurance as a part of their certificates, and this was approved by the Insurance Department of the State of Alabama (R. 159).

Again, Code 1940, Title 28, Section 220, copied in the appendix, provides that nothing contained in this article shall prevent the maintenance of a surplus "nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its by-laws."

It is clear, we submit, that the surplus fund, or the fund other than the trust fund, under the laws of Alabama is "for the use and benefit of the Society," and not of the individual members, and that, under the statutes of Alabama, the supervision of the handling of the surplus fund is committed exclusively to the Superintendent of Insurance and the Attorney General. (See Code 1940, Title 28, Sections 223, 224 and 225.)

It will be noted that Section 225 has been broadened since the decision in *Grand Lodge v. Shorter*, 219 Ala. 293, so that now, "irrespective of the matter of dissolution of any such Society," the right to protect the trust fund of

the Society is vested also in the Attorney General. True, in the absence of any action on the part of the Attorney General, individual members have a right to bring proceedings for the protection of the trust fund, that is, the fund provided by Code 1940, Title 28, Sections 176 and 177, from which benefits shall be paid.

McCall v. Grand Lodge, 217 Ala. 194;

Grand Lodge v. Shorter, 219 Ala. 293;

Grand Lodge K. P. of Ala. v. Shorter, 222 Ala. 404,
405, 122 So. 38;

Strother v. McCord, 222 Ala. 450;

Carter et al. v. Mitchell et al., 225 Ala. 287, 291;

Most Worshipful Grand Lodge (Colored) v. Callier,
224 Ala. 364, 370.

In each of the Alabama cases the suit of the individual member was to prevent the wrongful use of the trust fund. It is respectfully submitted that the individual members have no individual rights of action for the protection of the surplus or other funds exclusive of the trust fund.

Alabama Code 1940, Title 28, Sections 180 and 220.

The duty and responsibility to protect the surplus funds of the Society is vested exclusively in the State Superintendent of Insurance and the State Attorney General.

Alabama Code 1940, Title 28, Sections 46, 58, 222,
223, 224, 225, 261, 266, 268, 269.

(f) The trust funds of the Society have never been dissipated or impaired, and are in no danger of being invaded.

It is without dispute that adequate reserves have always been maintained and that the trust fund of the defendant Society has never been invaded for salaries, expenses or other unauthorized disbursements, and is in no danger of any such invasion. In fact, the surplus above the trust

funds have shown a remarkable and continuous yearly increase (R. 162):

Year	Surplus
1929.....	\$ 1,263.04
1930.....	9,412.59
1931.....	16,999.84
1932.....	33,166.84
1933.....	44,411.66
1934.....	94,711.52
1935.....	147,388.92
1936.....	171,876.47
1937.....	192,417.54
1938.....	250,180.58
1939.....	267,896.29

See, also, R. 109, 118.

The petitioner places much reliance upon a South Carolina case in which the petitioner's South Carolina counsel appeared as attorneys for the complaining members of the Society, *Ex parte Rowley*, 200 S.C. 174, 20 S. E. (2nd) 383, and petitioner quotes from that case on page 32 of its typewritten brief to show that a receiver might be appointed even though the Society was not insolvent. The last words of petitioner's quotation (its typewritten brief, page 32) are "insolvency of the Company was not necessary." The petitioner stopped in the middle of a sentence, and we respectfully submit should have completed that sentence (20 S. E. 387), "**but is very clearly indicated by the facts before us.**"

In the present case the undisputed facts not only established the solvency of the defendant Society, but also that both its trust fund and its surplus have increased every year of its existence (R. 162, 109, 118). Certainly under such circumstances the plaintiff has not made a case for relief to be granted to the plaintiff as a representative of the members of the defendant Society with respect to its trust fund.

(g) The plaintiff and the other members who he claims to represent have no such joint rights in the trust funds of the Society that they may be aggregated to make the jurisdictional amount.

The decisions of Federal Courts have made clear, we submit, that there are no such joint claims on the part of individual members of the defendant Society that they may be aggregated to make the jurisdictional amount. The plaintiff does not hold the status of a stockholder in the Society. The Society has no stockholders. The Society can never owe him or the beneficiary named by him in the certificate more than \$1,000.00. When this sum is paid, whether to his named beneficiary upon his death, or to him when he is number one in his division and the death of another member of the division occurs, his relationship and his estate's relationship with the Society are terminated and ended forever. He and his estate go, but the Society continues to live. Its life is not limited by the law, its charter is perpetual. When the stockholder of a corporation dies the corporation pays to the stockholder's estate nothing whatever. The assets of the corporation are not reduced one dollar or one penny. The estate of the deceased stockholder steps into the shoes of this stockholder and continues to go along with the corporation. The only financial or money claim that a certificate or policyholder has against the Society is measured by the terms of his certificate or policy. He, so to speak, is a quasi or prospective creditor of the Society. His claim against the Society can never exceed \$1,000.00. If he defaults in the payment of dues he may cease to have any claim, or, so to speak, step out of the Society, or, under the by-laws of this Society, if he has paid for as much as three years he automatically becomes entitled to a paid-up policy, for a much smaller sum, or a policy insuring his life for \$1,000.00 for a limited period of time.

The potential value of each certificate or policy depends upon many different things, and rarely, if ever do any two certificates or policies issued by the Society have the same potential value. However, there is one thing certain, and that is none of the certificates can possibly have a value in excess of \$1,000.00.

The law was most aptly and clearly stated by Circuit Judge Minton for the Seventh Circuit in the late case (1942) of *Andrews v. Equitable Life Assurance Society*, 124 Fed. (2nd) 788, 790, and enough of the other pertinent authorities which we have found were quoted and explained by Judge Minton:

"In determining whether or not such claims can be aggregated for the purpose of determining the jurisdictional amount, the question to be decided is not whether there is a common fund large enough to meet the test. The question is the nature of the plaintiff's claim in and to that fund. If the claims of the plaintiff and the persons he purports to represent are joint, they may be aggregated to make the jurisdictional amount.

"The size of the fund may then control. But where the claims, as in the case at bar, are several as against the fund, then the claims cannot be aggregated to make the jurisdictional amount. The decisions are clear on this point. In the case of *Eberhard v. Northwestern Mutual Life Insurance Co.*, 6 Cir., 241 F. 353, 355, the facts were very similar to the facts in this case. Three policyholders had filed a bill on behalf of themselves and all others similarly situated, in which it was alleged that a fund had been created by premiums paid in excess of the cost of insurance and by the amounts paid in by policyholders who did not survive the periods covered by their respective policies, or who had forfeited their policies or right of participation in the fund, by nonpayment of premiums. The plaintiffs asked for an accounting of the fund and a distribution on a proportionate basis. The fund

amounted to several million dollars, and it was alleged to be held by the company in trust for the plaintiffs and holders of similar policies.

“The defendant moved to dismiss the complaint and the lower court sustained the motion. The Circuit Court of Appeals affirmed it solely on the ground that the District Court was without jurisdiction. In that case the plaintiffs contended, just as the plaintiff does here, that the fund rather than the amount of each individual claim determined the jurisdiction. The court rejected this contention, saying: ‘It cannot be doubted that such rights as each policyholder has depend upon his contract with the insurance company and are measured by its terms. The policy is an agreement to pay its holder a computable sum of money upon certain conditions. His interest does not depend upon, and is not related to, the interest of any other policyholder similarly situated. True, there is some relation between the total number of qualified policyholders and the amount each will receive, but this mutual relationship is remote from that common interest which requires the claims of all to be jointly litigated, in order to ascertain the particular sum in which any one is entitled. The rights of policyholders are not derived from the same, or a common, title. The right each has in the fund is based upon the separate, distinct contract each has with the company with respect thereto. The sole matter in dispute is between the defendant and each complainant, as to the amount the latter shall recover. Each policyholder has no demand upon any other; his demand is against the defendant alone, and what he may receive from the defendant can in no way affect the claims of others. The policyholders’ claims to the fund are several, and not joint, and the amount payable to each depends upon his contract alone.’”

“This case was cited with approval and twice followed in this court: *Robbins v. Western Automobile Insurance Co.*, 4 F. (2d) 249; *Woods v. Thompson*, 14 F. (2d) 951. In the *Robbins* case the plaintiffs, resi-

dents of Illinois, sued the defendant, a Kansas corporation, in the Supreme Court of Cook County, Illinois, on behalf of themselves and others similarly situated, to enforce their claims arising out of insurance policies issued to them (the policies having been canceled) and to distribute a certain fund that had been accumulated by the defendant from the premiums paid in by the policyholders. The case was removed by the defendant to the Federal Court. A motion to remand was denied. Answer was filed, and the case went to trial, and the defendant got judgment. The plaintiffs' appeal attacked the jurisdiction of the Federal Court. It was conceded that none of the plaintiffs had paid a premium in excess of \$200.00. Judge Evans, speaking for the court, said (4 F. [2d] 250): 'Plaintiffs' claims are separate and distinct, and, in order that the federal court may acquire jurisdiction, the claim of one plaintiff should exceed \$3,000 * * *'. And upon the authority of *Eberhard v. Northwestern Mutual Life Insurance Company*, supra, Judge Evans rejected the contention of the defendants that the size of the fund which was in excess of the jurisdictional amount controlled, and held that the District Court was without jurisdiction, and ordered the case remanded to the state court.

"In the *Woods* case two suits were brought by former policyholders of the Illinois Bankers Life Association. The policyholders contended that 'members of an assessment insurance association * * * have common and undivided interests in the assets thereof * * *' (14 F. [2d] 952). They argued they had a common and undivided interest in a trust fund held for them and more than 60,000 other policyholders, and that they might aggregate their claims to this trust fund for jurisdictional purposes. Judge Anderson rejected this contention, and held that the matter in controversy was the interest and claim of each policyholder, and that the claim of each was separate and distinct. Judge Anderson said (14 F. [2d] 952): 'Appellees' cases are not helped by the aver-

ments that they are class suits, brought by them on behalf of themselves and of other policyholders. The practice of allowing suits to be so brought for convenience and economy does not affect the question under discussion. So far as concerns the relation of the appellees to the company as policyholders and members of it and their relation to its funds and assets, we are not able to perceive, and there has not been pointed out to us, any substantial difference between the instant cases and *Robbins v. Insurance Co.* and *Eberhard v. Insurance Co.*, *supra*. Every contention as to the aggregation of the several claims, and as to the amount of the trust fund determining the amount in controversy, is concluded by these decisions, and nothing would be gained by repeating the reasons and conclusions stated in them . . .

“From what we have said it follows that the District Court was without jurisdiction, and the motion to dismiss was properly sustained.”

Andrews et al. v. Equitable Life Assur. Soc. of United States et al., 124 F. (2d) 788, 791.

The Court of Appeals for the Sixth Circuit in the case of *Eberhard et al. v. Northwestern Mutual Life Insurance Co.*, 241 Fed. 353, in a well reasoned and considered opinion, denied Federal Court jurisdiction in a case on all fours with the case here, and that decision is cited with approval in the very similar case in the Supreme Court of the United States of *Lion Bonding & Surety Co. v. Karatz*, 262 U. S. 77.

It is respectfully submitted that the record makes no case of joint individual rights of the members, such as to be aggregated in a class suit to confer jurisdiction upon the Federal Court.

(h) The plaintiff did not comply with Rule 23, Rules of Civil Procedure.

The defendant Society in its answer averred (R. 163):

“Further answering, this defendant says that the plaintiff does not show that he has attempted to obtain relief within the Society, and the complaint does not set forth with particularity the efforts of the plaintiff to secure within the Society or from the Directors and Trustees such action as he desires, nor the reasons for the plaintiff's failure to obtain such action, nor the reasons for not making such effort. Further answering, this defendant says the plaintiff does not show that he has attempted to obtain relief before the Superintendent of Insurance of the State of Alabama, the officer vested by the Legislature of Alabama with supervision over the operation of Insurance Companies, and fraternal benefit societies, such as this defendant, and this defendant further avers that the plaintiff can obtain any relief to which he is legally or equitably entitled within the Society, and further can obtain any relief to which he is legally or equitably entitled before the Superintendent of Insurance of the State of Alabama.”

The complaint does not, as required by Rule 23, “set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as he desires, and the reasons for his failure to obtain such action or the reasons for not making such effort.” As far as the plaintiff goes in this respect is to aver by way of conclusion “that any attempt to obtain relief within the Society would be futile” (Appellant's App. 47). Has the plaintiff tried to bring upon the Society and its members the pressure, authority and power of control of the Superintendent of Insurance of Alabama? The plaintiff does not so aver. We submit that the law would place upon the plaintiff the duty of taking all lawful steps to secure relief within the

Society, including complaints to the proper administrative official, and the bringing into effect of the regulatory powers of the Superintendent of Insurance. The plaintiff has never complained in the slightest to the Superintendent of Insurance of Alabama, and yet that officer has ample authority under the statutes of the State of Alabama to correct each and all of the alleged abuses of which the plaintiff complains. (See Alabama Code 1940, Title 28, Secs. 46, 58, 223, 261, 266, 268, 269, copied with other Sections in the Appendix of this brief.)

(i) The defendant Society is aligned in interest with the plaintiff.

The petitioner (plaintiff) now claims that his action was a class action either on behalf of the members of the Society for the protection of the trust funds, or on behalf of the Society itself for the protection of the Society's assets. In neither phase is any fault whatever charged against the defendant Society, the corporation itself. The only such charge is contained in Paragraph 10 of the complaint (R. 137) wherein the plaintiff attempts to set up a claim for himself alone for fraud or deceit. If the present action is a class action, the interest of the defendant Society is directly opposed to the interest of the other defendants. The defendant Society is aligned in interest with the plaintiff, and hence the requisite diversity of citizenship does not exist.

As said in *Pharr v. Detroit Trust Co.* (6 C. C. A. 1941), 116 F. (2d) 807, 811:

"It is clear, from the record, that appellant is beneficially interested in the granting of the relief sought by the plaintiffs in the original action and that he is on their side of the controversy. It follows from so aligning the parties that his sole controversy is with citizens of his own state. *De Graffenreid v. Yunt-Lee Oil Company*, 5 Cir., 30 F. (2d) 574; *Magnolia*

Petroleum Company v. Suits, 10 Cir., 40 F. (2d) 161. The court below properly dismissed appellant's cross-claim for want of jurisdiction."

See also Indianapolis v. Chase National Bank, 314 U. S. 63, 69, 86 L. Ed. 48, 50;

* 2 Moore Fed. Practice-2272, Note 132 A. L. R. 197; Ga. Coast & P. R. Co. v. Lowenthal, 238 Fed. 795, certiorari denied 243 U. S. 644;

Stephens v. Smart, 172 Fed. 466;

Brown v. Denver Omnibus & Cab Co., 254 Fed. 560, 567;

Kelly v. Dolan, 218 Fed. 966, 971, affirmed 233 Fed. 635;

McLean v. State of Mississippi ex rel. Roy, 96 Fed. (2d) 741, 119 A. L. 670, 672.

(j) Taken in connection with the record facts the complaint fails to make a case as a class action against any of the defendants.

The complaint makes only broad and sweeping charges against the officers, directors and trustees of the defendant Society.

It charges that the contract of the defendant, Spencer H. Longshore, is void because it was entered into by the trustees of the ~~defendant Society~~ (Paragraph 22 (k) of complaint, R. 143). Those trustees were duly constituted as such by law and with full authority as such trustees (R. 158). Under the Alabama statutes the trustees were vested with the management of the Society, and had authority to enter into the contract.

Code 1940, Title 28, Sections 258 and 184, set out in the appendix.

By a meeting of the trustees on December 2, 1939, some time before the filing of this action, the commissions of the said Spencer H. Longshore were reduced and the term of his contract was reduced from twenty-five years to fifteen years, making it expire on March 1, 1944 (R. 121).

While his compensation has been apparently large as salaries go in the South, it is in line with compensation received by officers of similar organizations throughout the country. His compensation is on a commission basis and is predicated on the growth of the Society resulting from his efforts. His contract was entered into when the Society had but \$5,000.00 in assets and only about 500 members. The subsequently remarkable growth of the Society has been due largely to his efforts (R. 157). The ratio of expenses to total income of the Society is less than the average ratio of expenses to income of the majority of fraternal benefit societies operating on substantially similar lines throughout the United States (R. 157, 158). The requirements of the Superintendent of Insurance of Alabama have always been promptly complied with (R. 158). When taken in connection with the record facts which have been set forth at some length in our statement of the case, we respectfully submit that the complaint fails to make a case in favor of the defendant Society against any of its officers, directors or trustees.

Only one further contention remains to be answered, and that is the contention designated as Point Three in the petitioner's brief (Petitioner's typewritten brief, page 23):

“Point Three.

“The contracts upon which premiums have been paid to create this trust fund were wagering contracts, no insurable interest existing between the policy-holders, and therefore contrary to public policy and void.”

What we have already said to show that this action is not a class action, that the plaintiff does not “fairly insure the adequate representation of all” of the class; that the rights of the members of the Society are governed by the laws of the State of Alabama; that, under the laws

of Alabama the Superintendent of Insurance is entrusted with the duty to protect the funds of the Society; that the plaintiff did not comply with Rule 23, and that the defendant Society is aligned in interest with the plaintiff; are all fatal to any relief upon this contention. In addition, we note the following grounds why this contention cannot prevail:

1. It is not one of the assignments of error.
2. It is not one of the questions presented by the petition for certiorari. (See ante this page 13.)
3. The plaintiff, being a party to the alleged wagering contract, can have no relief on it.
4. No relief was asked in the complaint because of the claim that the insurance contract is a wagering contract (R. 144, 146), and the only relief even suggested was that "plaintiff is entitled to have his certificate reformed so as to be an ordinary certificate of whole life insurance" (Complaint, paragraph 27, R. 145 and 146).

The learned District Judge in his opinion fully and completely answered that suggestion (R. 166 and 167):

"Although such relief is not specifically prayed, the suggestion is made in paragraph 27 of the complaint that 'plaintiff is entitled to have his certificate reformed so as to be an ordinary certificate of "whole life" insurance.' If so, then plaintiff might remain interested in the insurance funds of the defendant Society even after any money judgment to which he might now be entitled had been paid. But there is no claim that the plaintiff applied for or intended to take an ordinary certificate of 'whole life' insurance. The plaintiff contends that the agent of the defendant Society induced him to apply for the certificate of contingent endowment insurance by certain alleged false and fraudulent representations; that the defendant Society bound itself to maintain the division in which plaintiff held membership at a strength of 25

members, which would enhance the probability of early collection of the insurance by plaintiff as an endowment; that the defendant Society has never had 25 members in any division and has no reasonable expectation of ever filling any division, and that 'this entire scheme of insurance is an illegal lottery and constitutes an illegal and unlawful scheme to defraud, and that it is also a wagering contract.' (See paragraph 24, subdivision b, of complaint.) The truth of any or all of these contentions if established would not entitle the plaintiff to have his certificate reformed so as to be an ordinary certificate of 'whole life' insurance. It is fundamental that, 'The instrument can only be reformed to conform to the parties' agreement. * * * Equity cannot make a new contract for the parties, or add new terms thereto.' 53 C. J., p. 909, Sec. 5. Or, as expressed by the Ninth Circuit Court of Appeals in *Bartelme v. Merced Irrigation District*, 31 F. (2d) 10, 13:

" 'Power to reform instruments for fraud or mistake is universally conceded to courts of equity, but a court of equity has no power to reform a contract, so as to insert in it a provision which the contracting parties never intended it to contain. It can go no farther than to make the contract express the true intention of the parties as to its provisions. In other words, it can make the contract only what the parties intended it to be.' "

Further, it was not necessary for plaintiff to have his policy or certificate reformed, for he had a right under the certificate (paragraph 1, R. 57; Exhibit A to answer) to change his certificate for a certificate upon any of the other ordinary ~~plans of insurance~~ issued by the Society (R. 118).

(5) Under the statutes and laws of Alabama the contingent endowment insurance contract is a valid contract. That form of contract is specifically authorized by the

statute law of the State of Alabama (General Acts of Alabama 1927, page 219, Alabama Code 1940, Title 28, Section 3, both set out in the appendix).

Petitioner's South Carolina counsel raised the same questions in other cases in the State of South Carolina, and the opinion of the Supreme Court of South Carolina, we submit, is conclusive. In *Gary v. Atkinson*, 200 S. C. 166, 20 S. E. (2d) 388, it is said:

"Turning to the sustaining grounds, which, incidentally, are barely touched in respondents' brief, we find that the first is a repetition of the second ground of the demurrer, undecided below, to the effect that the insurance contracts involved were fraudulent in their inception, being in the nature of wagering contracts on which account the Court will not lend its aid to their enforcement or protection. On this feature of the case another company has appeared and as *amicus curiae* filed an interesting and informative brief.

"However, we think that the point is concluded by the terms of Act No. 146 of the General Assembly of 1937, 40 Stat. 189. The Act plainly prohibits the future issuance of contingent endowment policies, and we think it equally applicable to the Unity policy designated 99-S which is a modified contingent endowment form, except to the extent of filling the divisions and classes already established, which by unmistakable implication legalized, if they needed it, such policies as had been issued before the enactment and provided for the continued issuance for the purpose of filling the divisions and classes theretofore created by existing companies, including Unity. This legislative enactment established our public policy upon the subject. *Wee's v. New York Life Insurance Co.*, 128 S. C. 223, 122 S. E. 586; *Alderman v. Alderman*, 178 S. C. 9, 181 S. E. 897."

Again, in *Powell v. Gary*, 200 S. C. 154, 20 S. E. (2d) 391, the Court said:

“The Company undertook to issue so-called ‘Contingent Endowment’ policies whereby the policyholders were promised that they would be placed in groups of twenty-five and when a policy matured by death of the holder, his beneficiary would be paid the face amount of the policy and the other policy in the group which was at that time the oldest would also be then matured and upon cancellation of it the insured would be paid the amount of insurance; and the premium rates were accordingly fixed at about double what they would have been for ordinary life insurance. *Unity v. Beasley* (Ga.), 13 S. E. (2d) 32.

“Validity of this unusual form of policy is treated in another decision filed simultaneously with this, that in the appeal of Gary as Executive Vice President in his proceeding against Atkinson and others in the case of *Morris*, Plaintiff, against *Unity Life Insurance Company* and others, Defendants, referred to hereinafter.”

The objection to this form of policy was raised before a three-Judge Federal Court in Oklahoma—*Liberty National Life Insurance Co. v. Reed*, 24 Fed. Supp., page 103—where it was duly considered and this form of insurance upheld by said Court.

It is not contended that this form of policy is not actuarially sound. The event whose happening matures the obligation is known and certain and is sure to happen. It is known that on an average a given number of members will die in each year. The amount the defendant Society must pay is known and certain, for when one dies two are paid, and the amount each is to receive is stated in the face of the contract. The Company makes no wager or gamble, for it promises to pay and does pay definite sums upon the happening of events certain to happen at times

definitely predictable in the aggregate. Every single underwriting principle of the universally accepted formula of ordinary life insurance governs and controls the calculation of premiums and the setting apart of reserves with which to provide for the payment of mortality endowments.

The petitioner, plaintiff, complains, however, that no insurable interest exists between the policyholders, and that the policyholders "do not belong to the class of beneficiaries of fraternal benefit insurance policies recognized and permitted by the statute law of the States of Alabama and South Carolina" (R. 144). The State of Alabama does not restrict the beneficiaries under certificates issued by fraternal benefit societies to any particular class of persons. On the contrary, Alabama Code 1940, Title 28, Section 173, copied in the appendix, provides in part that "Any beneficial member may direct any benefit be paid to such person or persons, entity or interest, as may be permitted by the laws of the Society?" When coupled with General Acts 1927, page 219, and Alabama Code 1940, Title 28, Section 3, there can be no sound argument made that the members of the division are not within the permitted class of beneficiaries under the laws of Alabama.

Further, the law is well settled in Alabama "that a person has an unlimited insurable interest in his own life, and that such person may take out a policy of insurance on his own life payable to whom he desires; that what is termed an 'insurable interest' is not necessary to the validity of such an issue procured by the assured."

National Life & Accident Ins. Co. v. Alexander, 226 Ala. 325, 327;

See, also, Metcalfe v. Montgomery, 229 Ala. 156, 160; Henderson v. First National Bank, 229 Ala. 658, 662.

To the same effect is the decision of the Third Circuit Court of Appeals in *Equitable Life Insurance Co. of Iowa v. Cumblings* (1925), 4 Fed. (2d) 794, 796.

See, also, *Burnett v. Wells*, 289 U. S. 670, 679, 77 L. ed. 1439, 1444.

In other words, in Alabama one person may legally insure his own life and make the insurance payable one-half to his estate and one-half to any other person, entity or interest. In effect that is what each of the members of defendant Society insured under the contingent mortality endowment plan actually does.

Even if the contracts did amount to wagering contracts, that fact would not sustain any claim of class action in the present case. The complaint does not state a claim either for relief to the plaintiff or as a class action within the jurisdiction of the District Court, and it was properly dismissed without prejudice.

Respectfully submitted,

RICHARD T. RIVES,

Montgomery, Alabama,

Attorney for Respondents.

A. F. WHITING,

HILL, HILL, WHITING & RIVES,

Montgomery, Alabama,

Of Counsel for Respondents.

I hereby certify that I have mailed, postage prepaid and properly addressed, a copy of the foregoing brief to Warren E. Miller, Esq., Washington, D. C., Attorney for the Petitioner.

Richard T. Rives,

Attorney for Respondents.

APPENDIX.

Alabama Statutes.—General Acts 1927, page 219; Code 1940, Title 28, Sections 3, 46, 58, 172, 173, 176, 177, 179, 180, 183, 184, 210, 220, 222, 223, 224, 225, 255, 258, 261, 266, 268; 269.

GENERAL ACTS 1927, PAGE 219.

AN ACT

To authorize the issuance of contingent endowment contracts of insurance by life insurance companies and fraternal benefit societies; and to provide for the maintenance of reserves thereon.

Be It Enacted by the Legislature of Alabama:

Section 1. That any life insurance company or fraternal benefit society transacting business in this State may issue contracts classifying the holders thereof into groups and providing for the payment of an endowment to the oldest member of each group contingent upon the mortality experience in such group.

Section 2. In order to pay such endowments as they severally mature, a reserve thereon shall be established and maintained upon a basis of not lower than the American Experience Table of Mortality with one year preliminary term and interest assumption of four per cent.

Section 3. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved August 1, 1927.

CODE 1940, TITLE 28.

Sec. 3. **Policies, etc., which divide policyholders or members into classes, paying benefits to the oldest member of class.** No life insurance company, mutual aid association, or fraternal benefit society, order or association operating in this state shall hereafter be permitted to issue policies, certificates or contracts to policyholders or members providing for the establishment of its policyholders or members into divisions and classes for the purpose of providing for the payment of benefits from special funds created for such purpose to the oldest member of the division and class, or to the member of the division and class whose policy has been in force the longest period of time, upon the death of a member in such division and class, except as hereinafter provided. Any life insurance company, mutual aid association, or fraternal benefit society, order or association, heretofore operating on this plan in this state may continue so to do upon condition that such life insurance company, fraternal benefit society, or mutual aid association shall not hereafter establish its policyholders, or members, into divisions or classes other than the divisions or classes actually containing subsisting policies, or certificates, and provided that no life insurance company (including any organization of whatsoever character engaged in the writing of life insurance upon any plan) and no fraternal benefit society, order or association, and no mutual aid association, shall be permitted to operate on such endowment plan unless it have a paid in capital stock, if a stock company, of at least one hundred thousand dollars, or a surplus if a mutual company, or fraternal benefit society, order or association of at least twenty-five thousand dollars, which shall be increased to one hundred thousand dollars within six years. Any foreign life insurance company, mutual aid association, or fraternal benefit society, order or association, now doing business in this

state, or hereafter qualifying and becoming licensed in this state, shall be permitted to operate on this plan upon the same conditions. In order to pay such endowments as they severally mature as well as to pay all other benefits incorporated in any such policies, certificates, or contracts of insurance, any life insurance company, fraternal benefit society, or mutual aid association now operating upon this plan in this state shall establish and maintain on each such policy a reserve upon a basis not lower than the American experience table of mortality, modified preliminary term, Illinois standard, and interest assumption of three and one-half percent covering each contingency provided for in such policy.

Sec. 46. Powers, duties and jurisdiction of bureau of insurance and superintendent of insurance. The superintendent of insurance shall possess and have all the powers, and perform all the duties of supervision, regulation, and control of the business of insurance in this state. And the superintendent of insurance shall exercise the same control over the insurance companies or associations, mutual aid companies, fraternal societies, inter-insurance exchanges, their officers, agents and representatives; and shall collect from them all taxes, fees, and penalties as are required by law. The superintendent of insurance shall have the management and supervision of the bureau of insurance and shall be charged with the performance of all acts necessary to the carrying out and effectuating the purposes and ends for which said bureau was created. And the superintendent of insurance is hereby authorized and empowered, from and after the date of his appointment and qualification as such superintendent of insurance, to perform all duties now required by law, in relation to the supervision, regulation and control of the business of insurance in this state.

Sec. 58. When domestic company restrained and receiver appointed. If, upon examination, the superintendent of insurance is of opinion that any domestic insurance company is insolvent, or has exceeded its powers, or has failed to comply with any provision of the law, or that its condition is such as to render its further proceedings hazardous to the public, or to its policyholders, he shall apply to a court of competent jurisdiction through the attorney general of the state, to issue an injunction restraining it, in whole or in part, from further proceeding with its business. Such court may, in its discretion, issue the injunction forthwith, or upon notice and hearing thereof, and after a full hearing of the matter, may dissolve or modify such injunction, or make it perpetual, and may make all orders and decrees needful in the premises, and may appoint agents or receivers to take possession of the property and effects of the company, and to settle its affairs subject to such rules and orders as the court may, from time to time, prescribe, according to the course of proceedings in equity.

Sec. 172. Extended or paid-up protection granted. Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve necessary to enable it to do so, under a table of mortality not lower than the American experience table and four per cent interest, may grant to its members extended and paid-up protection or such withdrawal equities as its constitution and laws may provide; but such grant shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made.

Sec. 173. Members and beneficiaries. Any person may be admitted to beneficial, or general, or social membership in any society in such manner and upon such showing of eligibility as the laws of the society may provide, and any

beneficial member may direct any benefit to be paid to such person or persons, entity, or interest as may be permitted by the laws of the society; provided, that no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable in conformity with the provisions of the contract of membership, and the member shall have full right to change his beneficiary, or beneficiaries, in accordance with the laws, rules and regulations of the society.

Sec. 176. When such certificates may be issued. Such society shall not issue any such certificate until it shall have simultaneously put in force at least five hundred such certificates on each of which at least one assessment has been paid; nor where the number of lives represented by such certificates fall below five hundred. The net beneficiary assessment collected upon such certificate shall be based upon the standard industrial table of mortality, and interest at the rate of three and one-half per cent per annum, or upon a higher standard.

Sec. 177. Net beneficiary funds kept separate. The net beneficiary funds so collected shall be kept as separate and distinct funds and shall not be liable nor used for the payment of debts and obligations of the society other than the benefits herein authorized.

Sec. 179. Issue of certificates. Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or if a voluntary association, the articles of association, the constitution and by-laws of the society, and the application for membership, and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member and copies of the same certified by the secretary of the society, or corre-

sponding officer, shall be received in evidence of the terms and conditions thereof, and any changes, additions or amendments to said charter or articles of incorporation, or articles of the association, if a voluntary association, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate, shall bind the member and his beneficiary and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership.

Sec. 180. Funds, investments, etc., of. Any society may create, maintain, invest, disburse, and apply an emergency, surplus, or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such fund shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in section 172 of this title. The fund from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed, shall be derived from periodical or other payments by the members of the society and accretions of said fund; but no society, domestic or foreign, shall hereafter be incorporated, or admitted to transact business in this state, which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted when valued upon the basis of the national fraternal congress table of mortality as adopted by the national fraternal congress, August 23, 1899, or any higher standard with interest assumption, not more than 4 per cent per annum, or write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than 4 per cent per annum.

Sec. 183. Distribution of funds. Every provision of the laws of the society for the payment of members of such society in whatever form made, shall distinctly state the purpose of the same, and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses.

Sec. 184. Organization; method, etc., of. Seven or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this article, may make and sign (giving addresses), and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or to lead to confusion.

The purpose for which it is formed—which shall not include more liberal powers than are granted by this article; but any lawful social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society—and the mode in which its corporate powers are to be exercised.

The names, residences and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year, or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

Sec. 210. Disability benefits; funds for kept separate. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds, and the valuation of all other business of the society; but where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experience and, in such case, a separation of the funds shall not be required.

Sec. 220. Surplus and reserves authorized. Nothing contained in this article shall prevent the maintenance of such surplus over and above the credits on the accumulation basis, and the reserves on the tabular basis as the society may provide by or pursuant to its by-laws; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its by-laws; nor as making any such reserves or credits a liability in determining the legal solvency of the society.

Sec. 222. Examination of domestic society. The superintendent of insurance, and any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he, and any person he may appoint, shall have free access to all the books, papers, and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the society. The expense of such examination shall be paid by the society examined, upon statement furnished by the superintendent of insurance, and the examination shall be made at least once in three years.

Sec. 223. Quo Warranto proceedings against society.

Whenever after examination the superintendent of insurance is satisfied that any domestic society has failed to comply with any provision of this article, or is exceeding its powers, or is not carrying out its contract in good faith, or is insolvent, or is transacting business fraudulently, or whenever any domestic society, after the existence of one year or more, shall have a membership of less than four hundred, or shall determine to discontinue business, the superintendent of insurance may submit to the attorney general a certified copy of such examination, with his recommendation thereon, and if in the opinion of the attorney general the facts and circumstances warrant, the attorney general shall thereupon commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society, and shall proceed at once to take possession of the books, papers, money and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto. Neither the director of the department of commerce, superintendent of insurance, attorney general, or any other official or employee of the state, shall be in any way liable in damages, or to a suit or action for damages, by reason of having ordered, made, or participated in the making of any such examination, or by reason of any action recommended by him to be taken upon the basis of any such examination, or by reason of any official finding, opinion, judgment or recommendation upon or with respect to such examination, or by reason of the institution of any such action in quo warranto, or by reason of the performance of any official duty imposed upon him under the provisions of this article.

Sec. 224. Notice of quo warranto proceedings. No such proceedings shall be commenced by the attorney general against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date to be named in said notice, to show cause why such proceedings should not be commenced.

Sec. 225. Authority of attorney general and policyholders to institute proceedings. No action in quo warranto for the dissolution of any such domestic society shall be entertained by any court of competent jurisdiction, unless the same is made by the attorney general. Irrespective of the matter of dissolution of any such society, the right to institute proper proceedings in any court of competent jurisdiction for the appointment of a receiver for the protection and preservation of the trust fund of any such domestic society which is being depleted and dissipated fraudulently and wrongfully, to the irreparable injury of policyholders who have a property right interest in such fund, is vested also in the attorney general; but, in the absence of any action on the part of the attorney general, nothing in this section shall prohibit the institution of proper proceedings in a court of competent jurisdiction by any proper party.

Sec. 255. Mode of incorporation without capital stock. Fifteen or more persons may become a body corporate, without capital stock, for the purpose of doing the business of a mutual aid, benefit, and industrial company or association, as follows: Said persons shall make and file a certificate in the office of the judge of probate of the county in which its principal place of business is proposed to be located. The certificate shall show the following: The name of the proposed corporation. The location of the principal office in this state. That the object or purpose of the corporation is to do business as a mutual aid, benefit, and in-

dustrial company or association, with the powers and privileges prescribed by the laws of the State of Alabama. That the incorporators have entered into bona fide agreements, for insurance, of the kind authorized to be done by mutual aid, benefit, and industrial companies or associations, with not less than five hundred persons, and shall have received therefrom not less than twenty-five thousand dollars in cash. That said sum of money is in the possession of two of the incorporators, designated by the subscribers to receive such money. Any other matters providing for the conduct of the business of the proposed corporation not inconsistent with the laws of the State of Alabama. The names, residences, and postoffice addresses of seven persons, selected from among the incorporators as trustees for said corporation, for its first year.

Sec. 258. Board of trustees, number, election, powers and duties of. The board of trustees of such corporation shall consist of not less than seven nor more than nine persons, who must be members of the corporation. They shall be elected annually, to hold office until their successors are elected and qualified. Such board of trustees shall be the governing body of such corporation, and shall have the power to make all needful or proper rules, regulations, and by-laws for the conduct of the business of such corporation, not inconsistent with the laws governing mutual aid, benefit, and industrial companies or associations, or any other laws of the State of Alabama. Such board of trustees shall be elected at an annual meeting, to be held at the principal office or place of business of said corporation at a time to be fixed by the by-laws of the corporation, and at such meeting the members of such company or association may attend and vote on all matters before the meeting in person, or they may be represented by proxies, which must be in writing, and be executed at least thirty days prior to said meeting.

Sec. 261. Prerequisites to transaction of business. Every such company or association shall, before transacting any business in this state, submit to the superintendent of insurance copy of its charter, by-laws, contracts or policies, schedule of rates and other instruments governing its operation, together with its financial statement. If upon examination thereof, the superintendent of insurance finds that the schedule of rates is adequate to cover the risk under its contracts or policies, and finds that the charter, by-laws, contracts, certificates, policies and financial statement of such company or association meet all other requirements of this article and of any amendment subsequently made to it, he shall issue to such company or association a license to transact business as a mutual aid, benefit or industrial company or association. No such company or association shall be licensed, authorized or permitted to transact business in this state until the superintendent of insurance has approved its charter, by-laws, contracts, certificates, policies and financial set-up and finds that they comply fully with all the requirements of this article.

Sec. 266. Visitation and inspection of companies by superintendent of insurance. At least once every two years, and oftener whenever he deems it prudent to do so, the superintendent of insurance shall, personally or by his deputy, together with some competent person appointed for him for that purpose, visit each such domestic company or association, and examine its books and records as to its business affairs, especially as to its financial condition and ability to fulfill its obligations and as to its compliance with the law. He shall in like manner visit and examine, or cause to be visited and examined by some competent person or persons whom he may appoint for that purpose, any foreign company or association applying for admission or already authorized to do business in this state whenever he deems it prudent for the protection of con-

tract or policyholders in this state, or believes that any such company or association has violated any of the provisions of this article, or any of the laws of this state, relating to foreign corporations.

Sec. 268. Injunction may issue against companies. If, upon examination, the superintendent of insurance is of the opinion that any such domestic company or association is insolvent, or has exceeded its powers, or has failed to comply with any provisions of the law, or that its condition is such as to render its further proceedings hazardous to the public, or to its contract or policyholders, he may apply to a court of competent jurisdiction through the attorney general of the state to issue an injunction restraining it in whole or in part from further proceeding with its business. Such court may, in its discretion, issue the injunction forthwith, or may, upon notice and hearing thereof, and after a full hearing of the matter, dissolve or modify such injunction or make it perpetual, and may make all orders and decrees needful in the premises, and appoint agents or receivers to take possession of the property and effects of such company or association, and settle its affairs subject to such rules and orders as the court may from time to time prescribe according to the course of proceedings in equity.

Sec. 269. Revocation or suspension of licenses and certificates. If the superintendent of insurance is of the opinion, upon examination or other evidence, that any such foreign company or association, is in an unsound condition, that its actual funds, exclusive of its capital, if any, are less than its liabilities, or if it has failed to comply with the law, or if its officers or agents refuse to submit to examination or to perform any legal obligation in relation thereof, or if it fails to pay any final judgment against it in favor of a citizen of this state, he may revoke or suspend all licenses and certificates of authority granted to it.

or its agents, and shall cause notification thereof to be published in one or more newspapers of general circulation, and no new business shall thereafter be done by it or its agents in this state while such default or disability continues, nor until its authority to do business is restored by the superintendent of insurance; but if ground for revocation or suspension relates only to the financial condition or soundness of such company or association, or to deficiency in its assets, he shall notify such company or association not less than ten days before revoking its authority to do business in this state, and he shall specify in the notice the particulars of the alleged violation.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 17

JAMES LANTER BELL,

Petitioner,

**PREFERRED LIFE ASSURANCE SOCIETY OF
MONTGOMERY, ALABAMA, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.**

SUPPLEMENTAL BRIEF FOR RESPONDENTS.

RICHARD T. RIVES:

*Montgomery, Alabama,
Attorney for Respondents.*

A. F. WHITING,

HILL, HILL, WHITING & RIVES,

Montgomery, Alabama,

Of Counsel for Respondents.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 17

JAMES LANIER BELL,

Petitioner,

PREFERRED LIFE ASSURANCE SOCIETY OF
MONTGOMERY, ALABAMA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.

SUPPLEMENTAL BRIEF FOR RESPONDENTS.

Respondents' counsel appreciate the opportunity granted to file this supplemental brief, and apologize for not being prepared to answer some of the questions asked by members of the Court. Those questions, while relevant and logically pertinent, had never been presented by the petitioner (plaintiff) and had not occurred to respondents' counsel.

Burden of Establishing Jurisdiction.

After all, the petitioner (plaintiff) had the burden to "show in his pleading, affirmatively and distinctly, the existence of whatever is essential to Federal jurisdiction."¹ The jurisdiction of a Federal Court "cannot be helped by presumptions or by argumentative inferences drawn from the pleadings."² The plaintiff "must carry throughout the litigation the burden of showing that he is properly in Court."³

Laws of Alabama Control Both as to Alleged Tort Liability and as to Contract.

Petitioner (plaintiff) alleged that, "Plaintiff's *contract* was executed in and is subject to the laws of the State of South Carolina" (R. 145, emphasis ours). For the reasons stated on pages 38 and 39 of respondents' original brief, it seemed clear that the *contract* of insurance was governed by the laws of Alabama.⁴ Moreover, the defendant Society accepted plaintiff's application at its home office in Montgomery, Alabama, and mailed to the plaintiff his certificate of insurance (R. 137, 151, 161, 63, 64, 133). "When an insurance policy becomes effective upon delivery by mail, the place of contracting is where the policy is posted."⁵

Insofar as the contract is concerned, it, therefore, appears clear that the laws of Alabama control. But

¹ *Smith v. McCullough*, 270 U. S. 456, 459; 70 L. Ed. 682, 685.

² *Norton v. Larney*, 266 U. S. 511, 515; 60 L. Ed. 413, 416.

³ *McNutt v. Gen. Motors Acc. Corp.*, 298 U. S. 178, 189; 80 L. Ed. 1135, 1141.

⁴ *Supreme Council R. A. v. Green*, 237 U. S. 531, 542, 59 L. Ed. 1089, 1100 L. R. A. 4916A, 771, 35 Sup. Ct. Rep. 724. *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 551, 69 L. Ed. 783, 785; *Sovereign Camp W. of W. v. Bolin*, 305 U. S. 66, 75, 83 L. Ed. 45, 50.

⁵ American Law Institute, *Conflict of Laws*, Sec. 317, 11 Am. Jur. *Conflict of Laws*, Sec. 108, p. 393.

what of any alleged tort? Presumptively the alleged frauds and wrongs of the directors and trustees were committed in Alabama. The only tort, any part of which is claimed to have occurred in South Carolina, is the alleged fraudulent representations which induced the plaintiff to apply for his certificate of insurance (R. 137). Plaintiff's application, however, was accepted by the defendant Society in Alabama and the contract became effective when issued from that State (R. 137, 151, 161, 63, 64, 133). Plaintiff suffered no damage by merely making an application, but he claims to have been damaged by the consummation of a contract based on that application. The contract being made in Alabama, and being governed by the laws of Alabama, that State is also where the plaintiff suffered any damage as the result of the alleged fraud or deceit.

"When a person sustains loss by fraud, the place of wrong is where the loss is sustained, not where fraudulent representations are made."⁶ "The place of the wrong, the 'locus delicti', is taken by courts in this country to be the State where the last event necessary to make the actor liable occurs."⁷ That is the alleged tort was consummated in Alabama.

To hold that the alleged tort of fraudulently inducing plaintiff to enter into the contract is governed by the laws of South Carolina while the contract is governed by the laws of Alabama would lead to incongruous and unjust results.⁸ In his complaint, the plaintiff expressly affirms that his certificate of insurance is in full force and effect (R. 145). In his original brief (page 41) petitioner says, "Petitioner's claim to a money judgment for fraud and deceit

⁶ Am. Law Inst. Conflict of Laws, Sec. 377 (4), p. 457; *Lasige v. Brown*, 17 How. (U. S.) 183, 15 L. Ed. 208.

⁷ *Hunter v. Derby Foods* (2 C. C. A. 1940), 110 F. (2d) 970; 132 A. L. R. 255, 258. 15 C. J. S. Conf. Laws, Sec. 12, p. 899, Note 68. Am. Law Inst. Restatement Conf. of Laws, Sec. 377 (1) p. 455.

is an affirmation, not a rejection or rescission, of his contract." The plaintiff alleges that other members were induced to purchase insurance upon similar fraudulent misrepresentations (Par. 15f, R. 138, and Par. 22b, R. 142). The plaintiff having elected to affirm his membership in the defendant Society—and for the sake of argument overlooking his inconsistency in claiming that he has been damaged by being induced to join—the plaintiff has bound himself that he and the other members should be treated on a parity, and cannot now collect exorbitant punitive damages under the laws of South Carolina, while other members are governed by laws less favorable to them (See pages 38 and 39 of Respondents' original brief).

In Alabama, if the complaint states any sufficient claim for fraud or deceit (See Respondents' original brief, pages 19-21); it does not show such gross and malicious fraud as to warrant the imposition of punitive damages (Same, page 22), and even if it does, those damages must bear proportion to the actual damages sustained or to the extent of the injury likely to result from disregard of duty (Same, pages 24, 25). Possibly in South Carolina the law may be otherwise,⁸ but certainly the plaintiff has not sustained the burden of showing that under the law of Alabama, and in view of the nature of the fraud or deceit alleged, when he has actually paid out only \$202.35, he may now recover more than \$3,000.00.

As An Individual Action for a Receiver for Plaintiff's Protection the Amount in Controversy Is Only Plaintiff's Claim.

Respondents had not understood that the plaintiff sought to sustain the jurisdictional amount on any theory other than (1) plaintiff's claim of punitive damages for himself,

⁸ South Carolina cases cited on p. 18 of Petitioner's original brief; *Eaddy v. Greensboro-Fayetteville Bus Lines*, 191 S. C. 538; 5 S. E. 2d 281.

or (2) plaintiff's alleged claim to represent all of the members or the Society itself in a class action (See Respondents' original brief, pages 30 et seq.). However, respondents recognized that in Alabama the plaintiff as the beneficiary of a trust fund might file an individual suit for a receiver to protect that fund.⁹ Respondents demonstrated that the trust fund of the Society has never been and is in no danger of being invaded (Respondents' original brief, pages 45 and 46), but if the contrary be assumed, still it is clear that the amount in controversy would be only plaintiff's claim.¹⁰

Respectfully submitted:

RICHARD T. RIVES,
Montgomery, Alabama,
Attorney for Respondents.

A. F. WHITING,
 HILL, HILL, WHITING & RIVES,
Montgomery, Alabama,
Of Counsel for Respondents.

⁹ *Grand Lodge K. of P. v. Shorter*, 219 Ala. 293, 294.

¹⁰ *Lion Bonding & S. Co. v. Karatz*, 262 U. S. 77, 86, citing *Eberhard v. Northwestern Mutual L. Ins. Co.*, 241 Fed. 353, 356.

SUPREME COURT OF THE UNITED STATES.

No. 17.—OCTOBER TERM, 1943.

James Lanier Bell, Petitioner, vs. Preferred Life Assurance Society of Montgomery, Alabama, et al.	{ On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.
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[November 8, 1943.]

Mr. Justice BLACK delivered the opinion of the Court.

The question here is whether petitioner's complaint was properly dismissed on the ground that the matter in controversy did not really and substantially exceed \$3,000 as required by §§ 24 and 37 of the Judicial Code.¹

Filed in the federal court for the Middle District of Alabama, petitioner's complaint alleged that he had been induced to purchase an insurance certificate through fraudulent misrepresentations of respondents' agent bearing upon its actual value, and claimed \$200,000 as actual and punitive damages.² The record shows that at the time of the dismissal petitioner had paid only \$202.35 on his certificate, and that its maximum potential value was only \$1,000. From this the District Court declared that it was "apparent to a legal certainty", *St. Paul Mercury Indemnity Co. v. Red Cab Company*, 303 U. S. 283, 289, that petitioner could in no event be entitled to more than \$1,000, and therefore concluded that the requisite \$3,000 was not really and substantially involved. The Circuit Court of Appeals affirmed³ holding that the claim of \$200,000 damages was "entirely colorable for the purpose of conferring jurisdiction" since it was "legally inconceivable" that petitioner's allegations could justify an award in excess of the value of his \$1,000 certificate.

¹ 36 Stat. 1091, 1098; U. S. C. Tit. 28, §§ 41, 80. The complaint alleged diversity of citizenship as the basis for federal jurisdiction.

² The complaint further alleged official misconduct on the part of certain officers of respondent society, and joined them as separate defendants. Petitioner contends that these allegations with the accompanying prayers for relief are sufficient in themselves to establish that the matter in dispute exceeds \$3,000, on any of three theories: A class action under Rule 23 of the Federal Rules of Civil Procedure; a derivative action against the officers for the benefit of the society; or an original action to reorganize a mutual insurance society properly brought by a member. As our decision indicates, we find it unnecessary to pass upon these contentions.

³ 131 F. 2d 516.

2 *Bell vs. Preferred Life Assurance Soc. of Montgomery, Ala.*

Where both actual and punitive damages are recoverable under a complaint each must be considered to the extent claimed in determining jurisdictional amount.⁴ Therefore even though the petitioner is limited to actual damages of \$1,000, as both courts held, the question remains whether it is apparent to a legal certainty from the complaint that he could not recover, in addition, sufficient punitive damages to make up the requisite \$3,000. If the controlling law is that of South Carolina, where the alleged fraudulent misrepresentations are said to have occurred, petitioner clearly might recover an award exceeding \$3,000.⁵ Respondents urge however that the law of Alabama, where the insurance certificate was issued and mailed, must control. We need not pass upon this question for we are satisfied that under the law of Alabama as well as that of South Carolina petitioner's allegations of fraud if properly proved might justify an award exceeding \$3,000.

Respondents assert that petitioner's complaint does not allege that type of "gross fraud" essential for an award of punitive damages under Alabama law. The Supreme Court of Alabama has declared that in an action for deceit "gross fraud" which will support punitive damages may be defined as "representations made with a knowledge of their falseness (or so recklessly made as to amount to the same thing), and with the purpose of injuring the plaintiff." *Southern Building and Loan Association v. Dinsmore*, 225 Ala. 550, 552. In the instant case the complaint alleges that the fraudulent representations "were false, and were known to be false when made and uttered with a reckless disregard for the truth"; that petitioner "relied upon them, and had a right to rely upon them"; and that he "would not have applied for such certificate except for such false representations." Plainly, then, this complaint alleges the equivalent of "gross fraud" as those words are defined by the Alabama courts.⁶ And, even if

⁴ *Barry v. Edmunds*, 116 U. S. 550, 560; *Scott v. Donald*, 165 U. S. 58, 89, 94.

⁵ Respondents did not seriously contend otherwise, and the South Carolina cases cited to us apparently foreclosed such a contention: *Eaddy v. Greenville Fayetteville Bus Lines Inc.*, 191 S. C. 538; *Cook v. Metropolitan Life Insurance Co.*, 186 S. C. 77; *Crosby v. Metropolitan Life Insurance Co.*, 167 S. C. 255. In this latter case it appears that punitive damages of \$1,211.70 were allowed although the actual damages were only \$11.70.

⁶ Had petitioner's complaint been filed in a state court in Alabama, it would have supported a verdict and judgment for punitive damages. The Alabama Supreme Court holds that, "It is not necessary to claim punitive damages specially, for they are not special damages. It is not necessary to allege the matter of aggravation which justifies their recovery." *Fidelity Phenix Fire Insurance Company of New York v. Murphy*, 226 Ala. 226, 232.

the fraud were not formally alleged to be "gross", a complaint filed in a federal court should not be dismissed for want of jurisdiction because of a mere technical defect such as would make it subject to a special motion to clarify. See *Sparks v. England*, 113 F. 2d 579; cf. *Chicago, Rock Island and Pacific Railway Company v. Schwyhart*, 227 U. S. 184, 194.

Respondents also maintain that, even if it would warrant some punitive damages, the complaint could not, under Alabama law warrant enough to support a judgment of \$3,000. It is true as respondents point out that the Alabama Supreme Court has said that the amount of punitive damages "ought . . . to bear proportion to the actual damages sustained;" *Mobile and Montgomery Railroad Co. v. Ashcraft*, 48 Ala. 15, 33; and that, while such damages "must rest in large measure within the discretion of the jury", this is not an "unbridled discretion." *Alabama Water Service Co. v. Harris*, 221 Ala. 516, 519. But neither in these cases, nor in any others cited to us, has that court held that punitive and actual damages must bear a definite mathematical relationship.⁷ That there is no such legal formula seems apparent from the rule relied upon by respondents as the correct Alabama rule regarding the measure of punitive damages, namely that, "The nature of the case should be considered, the character and extent of injury likely to result from disregard of duty, and all the attendant circumstances." *Alabama Water Service Co. v. Harris, supra*, 519. In the *Harris* case the court further emphasized the wide scope of allowable punitive damages by saying that a jury's award is not to be disturbed if, "allowing all presumptions in favor of" it, the court is not "clearly convinced it is so excessive as to demand the interposition of this court." *Ibid*. Considering these general principles of Alabama law, we are unable to say that under petitioner's complaint evidence could not be introduced at a trial justifying a jury verdict for actual and punitive damages exceeding \$3,000. Nor can this controversy as to jurisdictional amount be decided on the assumption "that a verdict, if rendered for that amount, would be excessive

⁷ In *United States Fidelity and Guarantee Co. v. Millonas*, 206 Ala. 147, 154, the court permitted an award of \$6,000 after finding that the actual damage suffered could in no event exceed \$1,000. And in *Ala. Great Southern Railroad Co. v. Sellers*, 93 Ala. 9, where the jury returned a verdict of \$500, it was held that the trial court did not err in refusing to charge that punitive damages could not be imposed if the plaintiff suffered only nominal actual damage.

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and set aside for that reason—a statement which could not, at any rate, be judicially made before such a verdict was in fact rendered.” *Barry v. Edmunds, supra*, 565.

The judgment of dismissal is reversed and the cause remanded to the district court for further proceedings.

Reversed and remanded.

A true copy.

Test:

Clerk, Supreme Court, U. S.